

FINAL



RECOMMENDATIONS

OF THE

OFFICE OF REGULATORY REINVENTION

REGARDING

LIQUOR CONTROL

June 2012

Office of Regulatory Reinvention
Liquor Control Advisory Rules Committee

Larry Alexander

President and CEO
Detroit Metro Convention & Visitors Bureau

Auday Arabo

President and CEO
Associated Food & Petroleum Dealers

Joe Borrello

President
Tasters Guild International

Michael Brown

Partner
Carlin Edwards Brown PLLC

Mark Burzych

Founding Member
Fahey Shultz Burzych Rhodes PLC

Donald Coe

Managing Partner
Black Star Farms

Richie Coleman

Regional Manager
Speedway

Andy Deloney

Chair
Michigan Liquor Control Commission

Dwain Dennis

Sheriff
Ionia County

Laura Fitzpatrick

Program Manager/Advocacy Liaison
MCHP/Mercy Health Partners

Linda Gobler

President and CEO
Michigan Grocers Association

Matt Greff

Owner
Arbor Brewing Company

Samantha Harkins

Legislative Associate
Michigan Municipal League

Marsha Keenoy

Director of Michigan Market
Diageo

J. Lambrecht

Proprietor
Fountain Bistro and Bookies Bar & Grille

Harold McGovern

President
NWS of Michigan

Pat Moody

Executive Vice President
Cornerstone Chamber of Commerce

Greg O’Niel

President/Owner
O.K. Distributors

Gerald Smith

Owner/Stockholder
Talley’s Log Cabin Bar, Inc.

Mike Telliga

Director of Government Affairs and Special
Projects
Midland Area Chamber of Commerce

Mike Zimmer (*Committee Chair*)

Chief Deputy Director
Dept. of Licensing and Regulatory Affairs

Table of Contents

1. Introduction
 2. Process
 3. Recommendations
- Appendix: Issue Papers Supporting Recommendations

1. INTRODUCTION

a. Background

This report contains the recommendations of the Office of Regulatory Reinvention (ORR) for changes to Michigan's liquor control regulations. These recommendations consist of the final recommendations from the Liquor Control Advisory Rules Committee (ARC), as modified and supplemented by the ORR.

The Liquor Control ARC was created by the Office of Regulatory Reinvention (ORR), in accordance with Executive Order 2011-5. The mission of the ORR is to ensure that Michigan's regulatory environment is simple, fair, efficient, and conducive to business growth and job creation. The purpose of the Liquor Control ARC was to produce advisory recommendations to the ORR for changes to Michigan's existing regulatory climate.

NOTE: This document is not part of the rulemaking process. Any proposed changes to administrative rules recommended by this report will be made as part of the rulemaking process, and any proposed changes to Michigan statute are subject to the legislative process.

b. Scope of the Liquor Control ARC's Work

The Liquor Control ARC was tasked with evaluating and making recommendations for changes to Michigan's liquor control regulations, including existing administrative rules, non-rule regulatory actions, regulatory processes, and as necessary, statutes. Evaluations and recommendations were based on the application of the seven factors described in Executive Order 2011-5 to existing rules. Those seven factors are as follows:

1. Health or safety benefits of the rules;
2. Whether the rules are mandated by any applicable constitutional or statutory provision;
3. The cost of compliance with the rules, taking into account their complexity, reporting requirements and other factors;
4. The extent to which the rules conflict with or duplicate similar rules or regulations adopted by the state or federal government;
5. Extent to which the regulations exceed national or regional compliance requirements or other standards;
6. Date of last evaluation of the rules and the degree, if any, to which technology, economic conditions or other factors have changed regulatory activity covered by the rules since the last evaluation; and
7. Other changes or developments since implementation that demonstrate there is no continued need for the rules.

Recommendations range from the general (e.g., identification of processes which need improvement) to the specific (e.g., language changes to existing rules). Because of the size and scope of Michigan’s liquor control regulations, the Liquor Control ARC focused its work on specific areas within the existing statutes and regulations.

2. Liquor Control ARC Process

The Liquor Control ARC met for the first time on August 24, 2011. Over the subsequent three months, the committee members submitted over nearly 100 potential recommendations for consideration by the Liquor Control ARC, presented as “Issue Papers”. Between August 24 and December 5, the Liquor Control ARC met seven times. Beginning with the October 26 meeting, roll call votes were taken on all proposed recommendations.

3. Recommendations

Below are presented the final recommendations of the ORR and Liquor Control ARC. There are 82 recommendations and sub-recommendations in total. Of the 74 ARC recommendations and sub-recommendations, 41 were approved with no opposition while 33 drew dissenting votes. Additionally, ORR has identified eight issues and has made recommendations (65 through 72) to address them. ORR also modified several of the ARC recommendations and those modifications are indicated where they occur. Copies of the final Issue Papers drafted by the committee members, providing background and rationale for each of the ARC’s recommendations, are included in the *Appendix* to this report.

Recommendation #1

Subject: MLCC Operations – Electronic Communication [p. A-3]

Recommendation: Increase the use of electronic communication. Increase the use of email with applicants, investigators, local law enforcement, and local governing bodies.

Unanimous

Recommendation #2

Subject: MLCC Operations - Enforcement Division [p. A-4]

Recommendation: Separate Enforcement Division into two sections: Licensing Investigation and Violation Enforcement.

Unanimous

Recommendation #3

Subject: MLCC Operations – Escorting Requirement [p. A-5]

Proposed Solution: Eliminate the DTMB-required escorting at the Commission’s Lansing Office.

Unanimous

Recommendation #4

Subject: MLCC Operations – Mail Communications [p. A-6]

Recommendation: Treat incoming documents differently depending on the level of their importance.

Unanimous

Recommendation #5

Subject: MLCC Operations – “Routine” Docket [p. A-7]

Recommendation: Increase the use of “routine” licensing docket. Permit the Licensing Division Analysts to expand applications submitted for the Commission’s review under the “routine” docket. Those applications that are problematic can continue to be fully written up for Commission review.

Unanimous

Recommendation #6

Subject: Rule 436.1103 – Licensing – Brewers (Forms) [p. A-8]

Recommendation: Allow license applicants to submit the same Brewers Notice and supporting documents required by the federal Alcohol and Tobacco Tax and Trade Bureau (TTB) to the Commission concurrent with their submission to the TTB.

Unanimous

Recommendation #7

Subject: R 436.1003 – Licensing – Building, Health and Zoning Compliance [p. A-9]

Recommendation: Rescind the rule requiring that local law enforcement officials certify an applicant’s compliance with local building, health and zoning regulations.

Unanimous

Recommendation #8

Subject: Licensing – Closing Packets (General) [p. A-10]

Recommendation: Improve efficiency of release of closing packets by simplifying the process. Expand staff cross-training and eliminate some of the closing requirements. For example, eliminate financial verification, stock issuance verification, and final inspection.

Unanimous

Recommendation #9

Subject: Licensing – Closing Packet (Verification of Stock Ownership/Membership) [p. A-11]

Recommendation: Only require verification of stock or membership issuance when applicant did not previously submit the information and it was not verified.

Unanimous

Recommendation #10

Subject: Conditionally Approved License [p. A-12]

Recommendation: Amend MCL 436.1501 as follows:

“Upon proof of issuance of the Applicant’s current, temporary, or permanent certificate of occupancy by the local unit of government, the filing of an acceptable proof of financial responsibility form, and payment of the applicable licensing fee, an Applicant for a license may request, and the Commission shall grant **or deny the request** within 14 calendar days ~~if requested~~, a conditionally approved retail license of the type requested in the application. The conditionally approved license shall be valid for up to 180 days from the date of issuance. The conditionally approved license shall be immediately suspended, however, should any of the following events occur during the pendency of the license:

- a) The Commission issues a final order denying or approving the application that serves as the basis for the conditional license;
- b) The Applicant fails to maintain adequate proof of its financial responsibility;
- c) The conditionally approved licensee is found responsible for a violation of the Liquor Code resulting in a suspension or revocation of the subject license;
- d) The conditionally approved licensee fails to provide proof of compliance with any server training requirements imposed pursuant to MCL 436.1906.

A conditionally approved license shall not be transferred from its current owner unless the Applicant also files a statement signed by the current owner consenting to the conditional license transfer.”

Unanimous

Recommendation #11

Subject: Licensing – Fingerprinting [p. A-13]

Recommendation: Amend the Liquor Control Code and rules to eliminate the fingerprinting requirement and run LEIN, NCIC or ICHAT checks on applicants if complete arrest and conviction information is deemed necessary.

Unanimous

Recommendation #12

Subject: R 436.1433 - Licensing – Food Concession Agreements [p. A-14]

Recommendation: Amend the rule to eliminate requiring Commission approval of food concession agreements. Create requirements for a licensee to follow in the rules and place the compliance burden

on the licensee. If there are complaints or red flags that are raised relative to the true ownership, then the Commission should investigate.

Unanimous

Recommendation #13

Subject: Licensing – Permits [p. A-15]

Recommendation: Allow for immediate issuance of certain permits. Those permits not requiring local law enforcement or local governing body approval should be available immediately upon payment of the fee and completing the application or receipt of the written request without any Commission investigation, local law enforcement recommendations, or Commission order. Permits that this immediate issuance allowance would apply to are:

- Sunday Sales/Sunday Morning Sales
- Additional Bar Permits
- Specific Purpose Permits
- Spirit Consumer Sampling Event Licenses
- Beer & Wine Sampling Event Permits

Unanimous

Recommendation #14

Subject: Licensing – Local Conditions [p. A-16]

Recommendation: The Commission should be more flexible on local governing body resolutions in allowing conditional resolutions.

Unanimous

Recommendation #15

Subject: Licensing – Inspections [p. A-17]

Recommendation: Eliminate most final inspections. Except for applications where Commission approval requires specific inventory requirements, final inspections should be done by the local jurisdiction that is responsible for ensuring that a Certificate of Occupancy is issued. If it is necessary, a follow-up enforcement check could be done instead of a final inspection.

Unanimous

Recommendation #16

Subject: Licensing – Investigations (Already Licensed Individuals) [p. A-18]

Recommendation: Eliminate investigation on individuals already licensed with the Commission. Use the term “currently licensed” or have existing licensees sign a form that says “no changes since last investigated.” LEIN, NCIC or ICHAT checks may be used on existing licensees where it is deemed necessary.

Unanimous

Recommendation #17

Subject: Licensing – Investigations (Financing) [p. A-19]

Recommendation: Eliminate pre-licensing verification of finances by the Commission. The Enforcement Division could conduct a follow-up investigation to verify the sources of finances if necessary.

Unanimous

Recommendation #18

Subject: Financial Review of Retail License Applicants (R 436.1105 and 436.1121) [p. A-20]

Recommendation: Amend R 436.1105 and 436.1121 by eliminating the word “verifiable.”

Add language to R 436.1105(1) indicating the applicant may comply with the rule by providing evidence in the form of a sworn affidavit attesting to the source and legitimacy of funds used to buy or start the business. Add additional language to R 436.1105 and R 436.1121 stating that an affidavit shall not be required for applicants who are publicly traded corporations, LLC or partnership, or subsidiaries of such a publicly traded entity. Use the MLCC audit process to later determine if any applicant has submitted false or incomplete funding information, and take appropriate remedial action if necessary at that point.

Unanimous

Recommendation #19

Subject: Licensing – Investigations (Forms) [p. A-21]

Recommendation: Auto-generate forms from MLCC database. The system should be able to automatically create all of the forms by identifying the type of application.

Unanimous

Recommendation #20

Subject: Licensing – Investigations (General) [p. A-22]

Recommendation: Waive unnecessary investigations. Such unnecessary investigations may include investigations of: corporate stock interest transfers to existing stockholders or back to the corporation itself, an LLC transferring membership interest to an existing member or back to the LLC itself, and a sole proprietorship transferring to an LLC.

Unanimous

Recommendation #21

Subject: Local Legislative Body Approval and Local Government Approval Timeframe [p. A-23]

1. **Recommendation:** Local legislative bodies should be allowed to delegate approval of a license to the clerk or other administrative officer and a checklist should be developed to assist the individual in processing license applications.

Yeas – Borrello, Burzych, Coe, Dennis, Deloney, Gobler, Greff, Harkins, McGovern, Moody, Smith, Telliga, Zimmer (13)

Nays – Arabo, Fitzpatrick, O’Niel (3)

Absent/Not Voting – Alexander, Brown, Coleman, Keenoy, Lambrecht (5)

2. **Recommendation:** Local governments should be required to follow the same process and use the same forms as the Commission and they must provide a reason for any denial of a license. Local law enforcement approval should be one of the elements included in the check list.

Yeas – Arabo, Borrello, Burzych, Coe, Dennis, Deloney, Fitzpatrick, Gobler, Greff, Harkins, Lambrecht, McGovern, Moody, O’Niel, Smith, Telliga, Zimmer (17)

Nays – None

Absent/Not Voting – Alexander, Brown, Coleman, Keenoy (4)

3. **Recommendation:** An incentive process should be established to provide local governments with 100 percent of their share of the licensing fee if they complete their review of the license within 30 days of their receipt of the Commission-prepared resolution regarding a license. Their share would be reduced on a sliding scale if their review takes longer than 30 days and could not exceed 30 percent if it took more than 89 days.

Yeas – Arabo, Borrello, Burzych, Coe, Dennis, Deloney, Fitzpatrick, Gobler, Greff, Lambrecht, McGovern, Moody, O’Niel, Smith, Telliga, Zimmer (16)

Nays – Harkins (1)

Absent/Not Voting – Alexander, Brown, Coleman, Keenoy (4)

4. **Recommendation:** Local license application fees should not exceed the application fee required by the Commission.

Yeas – Arabo, Borrello, Brown, Burzych, Coe, Dennis, Deloney, Gobler, Greff, Lambrecht, McGovern, Moody, O’Niel, Smith, Telliga, (15)

Nays – Fitzpatrick, Harkins, Zimmer (3)

Absent/Not Voting – Alexander, Coleman, Keenoy (3)

Recommendation #22

Subject: Licensing – Investigations (Staffing) [p. A-25]

Recommendation: The licensing staff could be more fully cross-trained for more flexibility so that the staff can be shifted to different job functions that the work flow requires and address the different backlogs in different areas at various times.

Unanimous

Recommendation #23

Subject: Licensing – Investigations [p. A-26]

Recommendation: Conduct minimal investigations when appropriate. For example, when a limited liability company or corporation adds a new member or stockholder or a partnership adds a new general partner, these acts should only result in an investigation of the new member, stockholder, or partner. In

these instances there should not be a full investigation of the entity, establishment, present ownership, etc.

Unanimous

Recommendation #24

Subject: Licensing – Investigations (Review Process) [p. A-27]

Recommendation: Authorize “incomplete” applications for investigations. When an application is incomplete when submitted, authorize the application for investigation and have the Enforcement Division secure the missing information or collect the fee shortages at the final license issuance.

Unanimous

Recommendation #25

Subject: Licensing – Investigations (Review Process) [p. A-28]

Proposed Solution: Review licensing applications and investigation components as the applicant submits the different components.

Unanimous

Recommendation #26

Subject: Licensing – Investigations (Review Process) [p. A-29]

Recommendation: Advise applicant and the applicant’s attorney of investigation problems.

Unanimous

Recommendation #27

Subject: Licensing – Investigations (Ownership) [p. A-30]

Recommendation: Waive the multistep “old” stock transfer investigations. Particularly, waive these investigations dealing with past transactions where a considerable amount of time has passed and the participants have since changed. A more common-sense approach should be used to determine whether an investigation is necessary.

Unanimous

Recommendation #28

Subject: Licensing – Investigations (Ownership) [p. A-31]

Recommendation: Eliminate the present ownership investigation. Investigate only the prospective new owner and conduct a present ownership investigation if deemed necessary by indications of an illegal transfer of ownership.

Unanimous

Recommendation #29

Subject: MCL 436.1531(1) - Licensing – Quota System [p. A-32]

Recommendation: Escrowed on-premises licenses should be transferable between adjacent counties subject to a five-year limitation on subsequent inter-county transfers. A fee of \$10,000 should be assessed for this type of transfer.

Unanimous

Recommendation #30

Subject: MCL 436.1501 - Status of License after Loan Default/Foreclosure [p. A-33]

Recommendation: Allow banks to hold a license following judicial or non-judicial foreclosure for record purposes only. Do not require the bank to be investigated.

Amend MCL 436.1501 to add the following:

“The commission may approve a receiver or trustee appointed by a court of competent jurisdiction or a secured party that forecloses on its security interest in the liquor license to operate the licensed establishment of a licensee.”

Unanimous

Recommendation #31

Subject: License Types – Brewers [p. A-34]

Recommendation: Replace the current microbrewer and brewpub licenses with a single small brewer’s license which combines the rights of the two current licenses to allow the small brewer to:

- brew not more than 30,000 barrels across all locations (based on the current maximum production for a microbrewer)
- hold a liquor license
- hold a small wine-makers and micro-distiller’s license
- package and distribute through the three tier system
- hold a specially designated merchant license

Unanimous

Recommendation #32

Subject: License Types – Resort [p. A-35]

Recommendation: Amend the Liquor Control Code to annually allow up to 40 on-premises licenses where the licensee has invested at least \$500,000. The fee for this license should be set at \$25,000 (\$5,000 is earmarked for local law enforcement).

Unanimous

Recommendation #33

Subject: MCL 436.1521a - License Types – Economic Development [p. A-36]

Recommendation: Amend the statute to make economic development liquor licenses available to villages and townships.

Yeas – Arabo, Borrello, Brown, Burzych, Coe, Dennis, Deloney, Fitzpatrick, Gobler, Greff, Lambrecht, McGovern, Moody, O’Niel, Telliga, Zimmer (16)

Nays – Harkins, Smith (2)

Absent/Not Voting – Alexander, Coleman, Keenoy (3)

Recommendation #34

Subject: MCL 436.1403 -- Distribution - Franchise Law (Small Brewers) [p. A-37]

Recommendation: Exempt from the Franchise Law contracts between a wholesaler and a microbrewer or small winemaker where that microbrewer’s or small winemaker’s volume through the wholesaler comprises less than 3% of that wholesaler’s book of business measured using case-equivalents. A “microbrewer” means a brewer producing less than 30,000 barrels/year. A “small winemaker” means a winemaker producing no more 50,000 gallons/year in this state.

***ORR recommends that this exemption be expanded to include small winemakers as indicated in italics above.*

Yeas – Borrello, Brown, Burzych, Coleman, Coe, Dennis, Gobler, Surprise, Smith, Zimmer (10)

Nays – Arabo, Deloney, Keenoy, McGovern, Moody, O’Niel, Telliga (7)

Absent/Not Voting – Alexander, Fitzpatrick, Harkins, Lambrecht (4)

Recommendation #35

Subject: MCL 436.1113(9) - Winemaker Definition [p. A-41]

Recommendation: Amend MCL 436.1113(9) to define a “Winemaker” as “a person licensed by the commission who principally manufactures and bottles wine in this state. A winemaker may produce, blend, bottle, store and transport wines. A winemaker may also import wines in bulk and import bottled wine of brands owned by the winemaker. The winemaker may purchase and have distilled spirits on the premises for purposes of fortification. The commission may approve a winemaker to sell wine which it manufactures for export out of the state, to a wholesaler, to another Michigan winery, to a retailer, to a consumer by direct shipment and at retail for on and off premises consumption at its licensed premises or at other premises authorized in this act.”

Yeas – Borrello, Brown, Burzych, Coe, Dennis, Deloney, Gobler, Greff, Harkins, Keenoy, Lambrecht, O’Niel, Smith, Telliga, Zimmer (15)

Nays – Arabo, Fitzpatrick, McGovern (3)

Absent/Not Voting – Alexander, Coleman, Moody (3)

Recommendation #36

Subject: MCL 436.1111(10) - Small Winemaker Definition [p. A-42]

Recommendation: Amend MCL 436.1111(10) to define a “Small Winemaker” as “a person who principally manufactures and bottles not more than 50,000 gallons of wine in one (1) calendar year in

this state. A small winemaker may produce, blend, bottle, store and transport wines. A winemaker may also import wines in bulk and import bottled wine of brands owned by the winemaker. The winemaker may purchase and have distilled spirits on the premises for purposes of fortification. The commission may approve a small winemaker to sell wine which it manufactures for export out of the state, to a wholesaler, to another Michigan winery, to a retailer, to a consumer by direct shipment and at retail for on and off premises consumption at its licensed premises or at other premises authorized in this act.”

Yeas – Borrello, Brown, Burzych, Coe, Dennis, Deloney, Gobler, Greff, Harkins, Keenoy, Lambrecht, O’Niel, Smith, Telliga, Zimmer (15)
Nays – Arabo, Fitzpatrick, McGovern (3)
Absent/Not Voting – Alexander, Coleman, Moody (3)

Recommendation #37

Subject: MCL 436.1107 – Farm Winemaker Definition [p. A-43]

Recommendation: Add to MCL 436.1107 the definition of “Farm Winemaker” which means “a winemaker manufacturing or bottling wine principally from fruits and other agricultural products harvested in this state. The Director of the Department of Agriculture and Rural Development shall determine in years of crop failure, the percent of loss, and allow a certain additional percent, based on the prior calendar year’s production, to be imported from out-of-state and used in the production of wine by the farm winemaker. If in the first five (5) years of operation, the winery may use a greater quantity of imported fruit, than is normally permitted under state law, in the production of its wine. A farm winemaker may produce, blend, bottle, store and transport wines. A winemaker may also import wines in bulk and import bottled wine of brands owned by the winemaker. The winemaker may purchase and have distilled spirits on the premises for purposes of fortification. The commission may approve a farm winemaker to sell wine which it manufactures for export out of the state, to a wholesaler, to another Michigan winery, to a retailer, to a consumer by direct shipment and at retail for on and off premises consumption at its licensed premises or at other premises authorized in this act.”

Yeas – Borrello, Brown, Burzych, Coe, Dennis, Deloney, Gobler, Greff, Harkins, Keenoy, Lambrecht, O’Niel, Smith, Telliga, Zimmer (15)
Nays – Arabo, Fitzpatrick, McGovern (3)
Absent/Not Voting – Alexander, Coleman, Moody (3)

Recommendation #38

Subject: MCL 436.2021(3) - Removal of Liquor from Premises [p. A-44]

Recommendation: Amend MCL 436.2021(3) to read, in part, “A vendor licensed to sell wine on the premises may allow an individual who has purchased a meal and partially consumed a bottle of wine with the meal, to remove the partially consumed bottle from the premises upon departure. This subsection does not allow the removal of any additional unopened bottles of wine unless the vendor is licensed as a specially designated merchant, **winemaker, small winemaker or farm winemaker.**”

Yeas – Borrello, Brown, Burzych, Coe, Dennis, Deloney, Gobler, Greff, Harkins, Keenoy, Lambrecht, O’Niel, Smith, Telliga, Zimmer (15)

Nays – Arabo, Fitzpatrick, McGovern (3)

Absent/Not Voting – Alexander, Coleman, Moody (3)

Recommendation #39

Subject: MCL 436.1111(9) - Small Distiller Definition [p. A-45]

Recommendation: Amend 436.1111(9) to define a “Small Distiller” as “a manufacturer of spirits annually manufactured, **rectified or blended** in Michigan not exceeding 60,000 gallons of spirits of all brands combined. **The commission may approve a small distiller to sell its spirits for export from the state, for distribution through the ADA system, to another Michigan distillery, and at retail for on and off premises consumption, at its licensed premises or at other premises authorized in this act.”**

Yeas – Borrello, Brown, Burzych, Coe, Dennis, Deloney, Gobler, Greff, Harkins, Keenoy, Lambrecht, O’Niel, Smith, Telliga, Zimmer (15)

Nays – Arabo, Fitzpatrick, McGovern (3)

Absent/Not Voting – Alexander, Coleman, Moody (3)

Recommendation #40

Subject: MCL 436.1105(10) - Brandy Manufacturer Definition [p. A-46]

Recommendation: Amend MCL 436.1105(10) to define a “Brandy Manufacturer” as “a person licensed under this act to engage in the manufacturing, rectifying or blending or both, of brandy only and no other distilled spirit. Only a licensed winemaker or a small winemaker is eligible to be a brandy manufacturer. The commission may approve a brandy manufacturer to sell **brandy which it manufactures for export from the state, for distribution through the ADA system, to another Michigan distillery, and at retail, for on and off premises consumption**, at its licensed premises or at other premises authorized in this act.”

Yeas – Borrello, Brown, Burzych, Coe, Dennis, Deloney, Gobler, Greff, Harkins, Keenoy, Lambrecht, O’Niel, Smith, Telliga, Zimmer (15)

Nays – Arabo, Fitzpatrick, McGovern (3)

Absent/Not Voting – Alexander, Coleman, Moody (3)

Recommendation #41

Subject: MCL 436.1603 - Brandy Manufacturer/Small Distiller Restaurant [p. A-47]

Recommendation: Amend MCL 436.1603(5) to read “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 **or contiguous to a** premises where the brandy manufacturer or small distiller is licensed. Brandy or spirits sold for consumption off the premises shall be sold at the uniform price established by the commission. **A license for alcoholic beverages not produced by the brandy manufacturer or small distiller may be acquired for a restaurant for on and off premises sale, and alcoholic beverages must be purchased through an authorized distribution agent of the state.”**

Amend MCL 436.1603(6) to read “The commission shall allow a small distiller **or brandy manufacturer** to sell brands of spirits it manufactures for consumption on **any** licensed premises of that distillery or **brandy manufacturer.**”

Yeas – Borrello, Brown, Burzych, Coe, Dennis, Deloney, Gobler, Greff, Harkins, Keenoy, Lambrecht, O’Niel, Smith, Telliga, Zimmer (15)
Nays – Arabo, Fitzpatrick, McGovern (3)
Absent/Not Voting – Alexander, Coleman, Moody (3)

Recommendation #42

Subject: MCL 436.1537 - Winemaker Restaurant/Brandy Manufacturer, Small Distiller Off-Site Tasting Room [p. A-48]

Recommendation: Amend MCL 436.1537(2) to read “A winemaker, **small winemaker, or farm winemaker** may sell wine made by that winemaker in a restaurant for consumption on or off the premises if the restaurant is owned by the winemaker or operated by another person under an agreement approved by the commission and located on **or contiguous to a** premises where the winemaker is licensed.”

Amend MCL 436.1537(4) to read “A winemaker, **small winemaker or farm winemaker**, with the prior written approval of the commission, may conduct wine tastings of wines made by that winemaker [and may sell wine the wine made by that winemaker] for consumption on and off the premises at a location other than the premises where the winemaker is licensed to manufacture wine under the following conditions:

....

c) The wine tasting locations shall be considered licensed premises and the winemaker may [include a] charge for samples.”

Amend MCL 436.1537(9) to read “A brandy manufacturer or small distiller with the prior written approval of the commission, may conduct tastings of brandy and spirits made by that brandy manufacturer or small distiller and may sell the brandy and spirits made by that brandy manufacturer or small distiller for consumption on and off the licensed premises at a location other than the licensed premises where the brandy manufacturer or small distiller is licensed to manufacture brandy or spirits under the following conditions:

....

c) The brandy and spirits tasting locations shall be considered licensed premises, **and the brandy manufacturer or small distiller may charge for samples.**”

Yeas – Borrello, Brown, Burzych, Coe, Dennis, Deloney, Gobler, Greff, Harkins, Keenoy, Lambrecht, O’Niel, Smith, Telliga, Zimmer (15)
Nays – Arabo, Fitzpatrick, McGovern (3)
Absent/Not Voting – Alexander, Coleman, Moody (3)

Recommendation #43

Subject: MCL 461.1603(6) - Retailer Sales [p. A-49]

Recommendation: Amend MCL 463.1603(6) to read “The commission shall allow a small distiller, **brandy manufacturer, winemaker, small winemaker and farm winemaker** to sell the brands of spirits and wines it manufactures for consumption on a licensed premises of that distillery and winery.”

Yeas – Borrello, Brown, Burzych, Coe, Dennis, Deloney, Gobler, Greff, Harkins, Keenoy, Lambrecht, O’Niel, Smith, Telliga, Zimmer (15)

Nays – Arabo, Fitzpatrick, McGovern (3)

Absent/Not Voting – Alexander, Coleman, Moody (3)

Recommendation #44

Subject: MCL 436.1547 - Catering Permit [p. A-50]

Recommendation: Amend MCL 436.1547(1)(b) to read “Catering Permit” means “a permit issued by the commission to a specially designated distributor, specially designated merchant, on premise licensee, **winemaker, small winemaker, farm winemaker, brandy manufacturer, small distiller, microbrewer, brewpub** for the sale of beer, wine and spirits”

Amend MCL 436.1547(2) to add **small distiller**.

Amend MCL 436.1547(3) to add **winemaker, small winemaker, farm winemaker, brandy manufacturer, small distiller, microbrewer, and brewpub**.

Yeas – Borrello, Brown, Burzych, Coe, Dennis, Deloney, Gobler, Greff, Harkins, Keenoy, Lambrecht, O’Niel, Smith, Telliga, Zimmer (15)

Nays – Arabo, Fitzpatrick, McGovern (3)

Absent/Not Voting – Alexander, Coleman, Moody (3)

Recommendation #45

Subject: R 436.582 - Special Licenses (Source of Purchase Options) [p. A-51]

Recommendation: Amend R 436.582(2)(c) to add **brandy manufacturer, small distiller, winemaker, small winemaker, and farm winemaker**.

Yeas – Borrello, Brown, Burzych, Coe, Dennis, Deloney, Gobler, Greff, Harkins, Keenoy, Lambrecht, O’Niel, Smith, Telliga, Zimmer (15)

Nays – Arabo, Fitzpatrick, McGovern (3)

Absent/Not Voting – Alexander, Coleman, Moody (3)

Recommendation #46

Subject: MCL 436.1526 - Beer Festival [p. A-52]

Recommendation: Amend MCL 436.1526(1) to read “The commission may issue a special license under this section to any organization conducting beer, **wine and spirits festivals**. **The application shall conform to the following:**

a) **Be submitted by a non-profit entity composed primarily of brewers, microbrewers and brewpubs, by brandy manufacturers, small distillers, by winemakers, small winemakers or farm winemakers as determined by the commission.**

b) **Involve an event having for its primary purpose the showcasing of beer, wine and spirits and their production.”**

Amend MCL 436.1526(3) to read “The holder of a special license issued under this section may buy a quantity of beer, **wine or spirits** as determined appropriate under the circumstances by the commission, directly from any licensed **manufacturer or** brewpub for consumption only at the licensed event.”

Amend MCL 436.1526(4) to read “As used in this section and section 413, ‘beer, **wine and spirits** festival’ means an event at which the various types **and kinds** of beer, **wine and spirits** and the production of **these** beer, **wines and spirits** are showcased to the general public and at which the public can purchase and sample the beer, wine and spirits being showcased for consumption on the licensed premises.”

Yeas – Borrello, Brown, Burzych, Coe, Dennis, Deloney, Gobler, Greff, Harkins, Keenoy, Lambrecht, O’Niel, Smith, Telliga, Zimmer (15)
Nays – Arabo, Fitzpatrick, McGovern (3)
Absent/Not Voting – Alexander, Coleman, Moody (3)

Recommendation #47

Subject: MCL 436.1201 - Discrimination against Michigan Manufacturers [p. A-53]

Recommendation: Amend MCL 436.1201(3) to read “A rule, regulation, **ordinance** or order made by the commission **or local unit of government** shall not unreasonably discriminate against **similar** Michigan manufacturers of alcoholic liquor.”

Yeas – Borrello, Brown, Burzych, Coe, Dennis, Deloney, Gobler, Greff, Harkins, Keenoy, Lambrecht, O’Niel, Smith, Telliga, Zimmer (15)
Nays – Arabo, Fitzpatrick, McGovern (3)
Absent/Not Voting – Alexander, Coleman, Moody (3)

Recommendation #48

Subject: Service at Events held under Special Licenses [p. A-54]

Recommendation: Authorize distillery, winery and brewery representatives (in and out of state) and wholesale distributor reps to pour and serve sample wines and beers at local festivals and fundraisers.

Unanimous

Recommendation #49

Subject: MCL 436.1707, MCL 436.1901, R 436.1011 and R 436.1417 – “Knowingly Allow” versus “Allow” [p. A-55]

Recommendation: Amend the regulations to protect licensees *and servers* except in cases where, considering the totality of the circumstances, it is clear they knew of or should have been aware of the

conduct constituting the violation they are charged with. *The lower standard of proof, however, should remain applicable to licensees and servers where the violation involves service of minors.*

***ORR recommends that servers also be included and that violations involving the service of minors be determined based on the existing lower standard of proof.*

Unanimous

Recommendation #50

Subject: R 436.1315 and R 436.1319 - Retail Advertising [p. A-58]

Recommendation: The MLCC should amend the Rules to allow suppliers and wholesalers to provide alcohol advertising material with specific reference to the retailer. The ARC proposed that the amended rule read as follows:

R 436.1315 Retail advertising space

Rule 15. A manufacturer, an outstate seller of beer, an outstate seller of wine, or a wholesaler may furnish to a retail licensee, and a retail licensee may receive, advertising which has the name of the retail licensee on the advertising.

R 436.1319 Cooperative advertising

Rule 19. (1) There shall not be cooperative advertising:

(a) Between a manufacturer, an outstate seller of beer, an outstate seller of wine, and a retail licensee.

(b) Between a wholesaler and a retail licensee.

(c) Between a manufacturer, an outstate seller of beer, an outstate seller of wine, and a wholesale licensee.

(2) A manufacturer, an outstate seller of beer, or an outstate seller of wine may:

(a) Pay the cost of painting the trucks of a wholesale licensee.

(b) Supply brand logo decals and advertising mats to a wholesale licensee without cost.

(c) Use the name of his wholesaler in his advertising.

(3) A manufacturer, an outstate seller of beer, an outstate seller of wine, or a wholesaler shall not in any manner furnish to a retail licensee, and a retail licensee shall not accept money or other valuable consideration for advertising space in or upon the premises of the retail licensee.

Yeas – Arabo, Borrello, Brown, Burzych, Coe, Dennis, Deloney, Fitzpatrick, Goble, Greff, Lambrecht, McGovern, Moody, O’Niel, Smith, Zimmer (16)

Nays – None

Absent/Not Voting – Alexander, Coleman, Harkins, Keenoy, Telliga (5)

Recommendation #51

Subject: R 436.1403 and R 436.1503 - Hours and days of operation [p. A-60]

Recommendation: Amend the rules to match the statutes and address time changes.

R 436.1403 Hours and days of operation.

Rule 3. (1) Except as provided in subrule (7) of this rule, an on-premise licensee shall not sell, give away, or furnish alcoholic liquor between the hours of 2 a.m. and 7 a.m. on any day nor between the hours of 2 a.m. and 12 noon on Sunday and shall not sell, give away, or furnish spirits between the hours of 2 a.m. and 12 midnight on Sunday, unless issued a Sunday sales permit by the commission which allows the licensee to sell spirits on Sunday between the hours of 12 noon and 12 midnight or **a Sunday morning permit pursuant to 436.2114 which allows the licensee to sell alcohol between 7:00 am and noon on Sunday.**

(2) **Between the hours of 2:30 a.m. and 12 noon on any Sunday unless issued a Sunday morning permit pursuant to 436.2114 which allows the licensee to sell alcohol between 7:00 am and noon on Sunday,** or from 2:30 a.m. to 7 a.m. on any other day, an on-premise licensee shall not allow the licensed premises to be occupied by anyone except the on-premise licensee, the bona fide employees of the on-premise licensee who are working, or bona fide contractors and employees thereof who are working, except as provided in subrule (8) of this rule or unless such on-premise licensee first obtains a permit approved by the liquor control commission and by the chief of police, sheriff, or other chief law enforcing officer in the community which authorizes the on-premise licensee to remain open for a stated specific purpose for such other hours and during such periods of time as the commission may determine. The permit shall be displayed adjacent to the license. In the case of a class A hotel, a class B hotel, and a club licensee with bedrooms or suites for bona fide club members and their guests, this subrule shall apply only to the following portions of the licensed premises:

(a) Rooms open to the general public or club members and their guests for eating, drinking, or amusement where alcoholic liquor is served.

(b) Rooms used for wedding parties and similar activities where alcoholic liquor is served.

(3) An on-premise licensee shall not allow the consumption of any alcoholic liquor on the licensed premises between the hours of 2:30 a.m. and 7 a.m. on any day, except as provided in subrule (7) of this rule.

(4) **An on-premise licensee shall not allow the consumption of any alcoholic liquor on the licensed premises between the hours of 12:30 a.m. on December 25 to noon on December 25.**

(5) An on-premise licensee shall not allow the consumption of spirits on the licensed premises between the hours of 2:30 a.m. and 12 midnight on Sunday. This subrule does not apply to the consumption of spirits on the licensed premises between the hours of 12 noon and 12 midnight on Sunday if the on-premise licensee possesses a Sunday sales permit issued by the commission **or the consumption of spirits between 7:00 a.m. and noon if the on-premises licensee possesses a Sunday morning permit pursuant to 436.2114 which allows the licensee to sell alcohol between 7:00 am and noon on Sunday.**

(6) **An on-premise licensee shall not allow the consumption of any alcoholic liquor on the licensed premises between the hours of 2:30 a.m. and 12 noon on Sunday unless the on-premises licensee possesses a Sunday morning permit pursuant to 436.2114 which allows the licensee to sell alcohol between 7:00 am and noon on Sunday.**

(7) An on-premise licensee shall not sell alcoholic liquor on January 1 after 4 a.m. or before the legal hour of sale as provided in subrule (1) of this rule, and alcoholic liquor shall not be consumed on the licensed premises on January 1 after 4:30 a.m. or before the legal hour for consumption as provided in subrules (3), (5), and (6) of this rule.

(8) From 4:30 a.m. on January 1 to the legal hour of sale as provided in subrule (1) of this rule, an on-premise licensee shall not allow the licensed premises to be occupied by anyone other than the on-premise licensee, the bona fide employees of the licensee who are working, or bona fide contractors and employees thereof who are working, unless the on-premise licensee has been granted a specific purpose permit authorized by subrule (2) of this rule. In the case of a class A hotel, a class B hotel, and a club licensee with bedrooms or suites for bona fide club members and their guests, this subrule applies only to the following portions of the licensed premises:

(a) Rooms open to the general public or club members and their guests for eating, drinking, or amusement where alcoholic liquor is served.

(b) Rooms used for wedding parties and similar activities where alcoholic liquor is served.

(9) The provisions of subrules (3), (4), (5), (6), and (7) of this rule do not apply to the consumption of alcoholic liquor in the bedrooms or suites of registered guests of licensed hotels or in the bedrooms or suites of bona fide members of licensed clubs.

(10) On the date that the time changes to Daylight Time from Standard Time on-premises licensees shall not allow the licensed premises to be occupied by anyone other than the on-premises licensee, the bona fide employees of the licensee who are working, or bona fide contractors and employees thereof who are working, unless the on-premises licensee has been granted a specific purpose permit authorized by subrule (2) of this rule from 3:30 a.m. Daylight Time to the legal hour of sale as provided in subrule (1) of this rule.

Yeas – Arabo, Borrello, Brown, Burzych, Coe, Dennis, Deloney, Fitzpatrick, Greff, Lambrecht, McGovern, Moody, O’Niel, Smith, Zimmer (15)

Nays – None

Absent/Not Voting – Alexander, Coleman, Gobler, Harkins, Keenoy, Telliga (6)

Recommendation #52

Subject: MCL 436.2013 - Sale or purchase of alcoholic liquor for cash; exceptions [p. A-65]

Recommendation: Amend the statute to allow the retailer the choice as to whether credit is extended to customers.

436.2013 Sale or purchase of alcoholic liquor for cash; exceptions.

Sec. 1013. A sale or purchase of alcoholic liquor by all types of licensees shall be for cash only, except the following:

(a) **A customer’s charge account with a retail licensee.**

(b) A sale to a person holding an authorized credit card from a credit card agency.

(c) A sale by a private club to a bona fide member.

Yeas – Arabo, Borrello, Brown, Burzych, Coe, Dennis, Deloney, Gobler, Greff, Lambrecht, McGovern, Moody, O’Niel, Smith, Zimmer (15)

Nays – Fitzpatrick (1)

Absent/Not Voting – Alexander, Coleman, Harkins, Keenoy, Telliga (5)

Recommendation #53

Subject: R 436.1321 - Contests and advertising articles (Secondary Use) [p. A-67]

Recommendation: The MLCC should remove all prohibitions on Secondary Use items that are provided by suppliers.

Yeas – Borrello, Brown, Burzych, Coe, Deloney, Gobler, Greff, Harkins, Lambrecht, McGovern, Smith, Zimmer (12)

Nays – Arabo, Dennis, Fitzpatrick, Moody, O’Niel, Telliga (6)

Absent/Not Voting – Alexander, Coleman, Keenoy (3)

Recommendation #54

Subject: Increase the Monthly Cap of 9 Liters that an On-Premise Licensee May Buy from an Off-Premise Licensee (MCL 436.1205(10)) [p. A-69]

Recommendation: Amend PA 440 to Increase the amount of liquor that on-premise licensees may buy from off-premise licensees.

Yeas – Arabo, Brown, Burzych, Coleman, Coe, Dennis, Deloney, Fitzpatrick, Greff, Harkins, Keenoy, Lambrecht, McGovern, Smith, Telliga, Zimmer (16)

Nays – None

Absent/Not Voting – Alexander, Borrello, Gobler, Moody, O’Niel (5)

Recommendation #55

Subject: MLCC Adjust the Per-Case ADA Fee (MCL 436.1205(13)) [p. A-71]

Recommendation: The MLCC should use its existing authority to increase the per-case ADA fee.

Yeas – Arabo, Coleman, Coe, Dennis, Deloney, Fitzpatrick, Greff, Harkins, Keenoy, Lambrecht, McGovern, O’Niel, Smith, Telliga, Zimmer (15)

Nays – Burzych (1)

Absent/Not Voting – Alexander, Borrello, Brown, Gobler, Moody (5)

Recommendation #56

Subject: Have the State Administrative Board Utilize Its Authority to Increase the Cap on the Per-Case ADA Delivery Fee (MCL 436.1205(13)) [p. A-73]

Recommendation: The State Administrative Board should utilize its authority to increase the current maximum of \$7.50 for the per-case ADA delivery fee.

Yeas – Arabo, Brown, Coe, Dennis, Deloney, Fitzpatrick, Greff, Harkins, Keenoy, Lambrecht, McGovern, Smith, Telliga, Zimmer (14)
Nays – Burzych, Coleman (2)
Absent/Not Voting – Alexander, Borrello, Gobler, Moody, O’Niel (5)

Recommendation #57

Subject: MLCC to Limit the Number of Products Available [p. A-75]

Recommendation: The MLCC should limit the number of products available.

Yeas – Arabo, Borrello, Burzych, Coleman, Coe, Dennis, Deloney, Fitzpatrick, Greff, Harkins, Keenoy, Lambrecht, McGovern, O’Niel, Smith, Telliga, Zimmer (17)
Nays – None
Absent/Not Voting – Alexander, Brown, Gobler, Moody (4)

Recommendation #58

Subject: ADA - Process and Standards for Regular Adjustments to the Per-Case ADA Delivery Fee [p. A-77]

Recommendation: A statutory process should be developed with an appropriate index to establish the fee cap and a service-linked metric to set the actual fee.

Yeas – Arabo, Borrello, Brown, Coe, Dennis, Deloney, Fitzpatrick, Gobler, Greff, Harkins, McGovern, Moody, O’Niel, Telliga, Zimmer (15)
Nays – Burzych, Lambrecht, Smith (3)
Absent/Not Voting – Alexander, Coleman, Keenoy (3)

Recommendation #59

Subject: Microbrewer Parity with Winemakers [p. A-80]

Recommendation: Include microbreweries in provisions currently applied to small wine-makers.

1. Add Micro brewer to the special licensee source of purchase options
R 436.582 Special licensee source of purchase options.
Rule 12. (1) A special licensee may purchase spirits from a licensed specially designated distributor at the uniform sales price set by the commission.
(2) A special licensee may purchase beer and wine from any of the following entities:
(a) A licensed specially designated merchant.
(b) A licensed wholesaler
(c) A licensed Michigan wine maker or small wine maker.
(d) A licensed Michigan Micro brewer
(3) A special licensee may purchase mixed spirit drink from a specially designated distributor or from a licensed wholesaler.
2. Change the definition of “Micro brewer” in MCL 436.1109 to allow the same access to market as is currently provided for in the definition of “Wine maker”
MCL 436.1113 Definitions; T to W.

(9) "Wine maker" means any person licensed by the commission to manufacture wine and to sell that wine to a wholesaler, to a consumer by direct shipment, at retail on the licensed winery premises, to sell that wine to a retailer, and as provided for in section 537.

MCL 436.1109 Definitions; M to O.

(3) "Micro brewer" means a brewer that produces in total **any person licensed by the commission to manufacture** less than 30,000 barrels of beer per year and ~~that may sell the beer produced to consumers at the licensed brewery premises for consumption on or off the licensed brewery premises.~~ **to sell that beer, to a wholesaler, to a consumer by direct shipment, at retail for consumption on or off the licensed brewery premises, to a retailer, and as provided for in section 537.** In determining the 30,000-barrel threshold, all brands and labels of a brewer, whether brewed in this state or outside this state, shall be combined and all facilities for the production of beer that are owned or controlled by the same person shall be treated as a single facility.

3. Change MCL 436.1537 as follows to include micro brewers:
Classes of vendors permitted to sell alcoholic liquors at retail; sale of wine by wine maker; beer and wine tastings; brandy and spirits tasting.
(d) Direct shippers where **wine and beer** may be sold and shipped directly to the consumer.
(o) **Wine maker and Micro brewer** where **wine and beer** may be sold by direct shipment, at retail on the licensed premises, and as provided for in subsections (2) and (3).

<p><i>Yeas</i> – Borrello, Brown, Burzych, Coe, Deloney, Gobler, Greff, Lambrecht, McGovern, Moody, Smith, Zimmer (12) <i>Nays</i> – Arabo, Dennis, Fitzpatrick, O’Niel (4) <i>Absent/Not Voting</i> – Alexander, Coleman, Keenoy, McGovern, Telliga (5)</p>
--

Include Micro brewers in changes approved by this committee for wineries and micro-distillers

1. To export beer to licensees and consumers subject to the laws and regulations of the receiving state.

<p><i>Yeas</i> – Borrello, Brown, Burzych, Coe, Deloney, Gobler, Greff, Harkins, Lambrecht, Moody, Smith (11) <i>Nays</i> – Arabo, Dennis, Fitzpatrick, McGovern, O’Niel, Zimmer (6) <i>Absent/Not Voting</i> – Alexander, Coleman, Keenoy, Telliga (4)</p>

2. To sample and sell by the glass, by the bottle, by the case, or by the keg, beer produced in-state for consumption on- or off-premise at the production site and at licensed off-site hospitality rooms.

Yeas – Arabo, Borrello, Brown, Burzych, Coe, Dennis, Deloney, Fitzpatrick, Gobler, Greff, Harkins, Lambrecht, McGovern, Moody, Smith, Zimmer (16)
Nays – O’Niel (1)
Absent/Not Voting – Alexander, Coleman, Keenoy, Telliga (4)

3. To operate hospitality rooms singly or jointly with other Michigan producer licensees.

Yeas – Brown, Burzych, Coe, Dennis, Gobler, Greff, Harkins, Lambrecht, Moody, Smith (10)
Nays – Arabo, Borrello, Deloney, Fitzpatrick, McGovern, O’Niel, Zimmer (7)
Absent/Not Voting – Alexander, Coleman, Keenoy, Telliga (4)

4. To provide samples complimentary or for a fee.

Yeas – Arabo, Borrello, Brown, Burzych, Coe, Dennis, Deloney, Gobler, Greff, Harkins, McGovern, Moody, Smith, Zimmer (14)
Nays – Fitzpatrick, O’Niel (2)
Absent/Not Voting – Alexander, Coleman, Keenoy, Lambrecht, Telliga (5)

5. To sell beer made by that micro brewer in a restaurant for consumption on or off the premises if the restaurant is owned by the micro brewer or operated by another person under an agreement approved by the commission and if on property of the brewery or on property contiguous to the brewery.

Yeas – Borrello, Brown, Burzych, Coe, Dennis, Deloney, Gobler, Greff, Harkins, Lambrecht, McGovern, Moody, Smith, Zimmer (14)
Nays – Arabo, Fitzpatrick, O’Niel (3)
Absent/Not Voting – Alexander, Coleman, Keenoy, Telliga (4)

6. To sell alcoholic beverages not normally sold by the brewery if purchased through an authorized distribution agent of the state.

Yeas – Borrello, Brown, Burzych, Coe, Dennis, Deloney, Fitzpatrick, Gobler, Greff, Harkins, Lambrecht, Moody, Smith (13)
Nays – Arabo, O’Niel, Zimmer (3)
Absent/Not Voting – Alexander, Coleman, Keenoy, McGovern, Telliga (5)

7. To sell beer for off premises consumption at farm markets subject to regulations of the commission.

Yeas – Borrello, Brown, Burzych, Coe, Dennis, Gobler, Greff, McGovern, Moody, Zimmer (10)
Nays – Arabo, Deloney, Fitzpatrick, Lambrecht, O’Niel, Smith (6)
Absent/Not Voting – Alexander, Coleman, Harkins, Keenoy, Telliga (5)

***ORR recommends that Michigan winemakers also be allowed to sell their wine at farm markets.*

Recommendation #60

Subject: MLCC system [p. A-84]

Recommendation: Upgrade the MLCC system to allow suppliers access to pertinent information, such as daily sales information by account. Suggest supplier would have assigned password into the system and their assigned brands.

Unanimous

Recommendation #61

Subject: Allow Instantly Redeemable Coupons (IRC) to be more than one size for spirits [p. A-85]

Recommendation: Allow IRC's to include more than one size and allow them to read "750ml or larger," if desired

Yeas – Arabo, Brown, Burzych, Coleman, Coe, Dennis, Deloney, Fitzpatrick, Greff, Harkins, Keenoy, Lambrecht, McGovern, Smith, Telliga, Zimmer (16)

Nays – None

Absent/Not Voting – Alexander, Borrello, Gobler, Moody, O'Niel (5)

Recommendation #62

Subject: License Fee Disbursement [p. A-86]

Recommendation: Levy a \$20 surcharge on all licenses (manufacturer, wholesale and retail) to support an education and enforcement competitive grant program to be administered by the MLCC.

Yeas – Arabo, Borrello, Brown, Burzych, Coleman Coe, Dennis, Deloney, Gobler, Surprise, Keenoy, McGovern, Moody, O'Niel, Zimmer (15)

Nays – Smith, Telliga (2)

Absent/Not Voting – Alexander, Fitzpatrick, Harkins, Lambrecht (4)

Recommendation #63

Subject: Beer and Wine Excise Tax Collection (MCL 436.1409 and R 436.1621) [p. A-87]

Recommendation: Shift the collection of the excise tax on beer and wine produced outside of Michigan from the supplier to the distributors to increase efficiency.

Yeas – Arabo, Borrello, Brown, Burzych, Coe, Dennis, Deloney, Fitzpatrick, Gobler, Greff, Lambrecht, McGovern, Moody, O'Niel, Smith, Zimmer (16)

Nays – None

Absent/Not Voting – Alexander, Coleman, Harkins, Keenoy, Telliga (5)

Recommendation #64

Subject: MCL 436.1541 -- Motor Vehicle Fuel Pumps [p. A-88]

Recommendation: Reduce the inventory threshold to \$50,000.

Yeas – Alexander, Borrello, Brown, Burzych, Coleman, Coe, Dennis, Deloney, Gobler, Greff, Harkins, Lambrecht, Moody, Smith, Telliga (15)
Nays – Arabo, Fitzpatrick, McGovern, O’Niel, Zimmer (5)
Absent/Not Voting – Keenoy (1)

Recommendation #65

Subject: Adjustment of the Per-Case ADA Fee

Recommendation: The ARC made three recommendations regarding adjustment of the statutory per-case ADA fee; one (#55) asked the MLCC to exercise its statutory authority to increase the fee to the statutory maximum of \$7.50, another (#56) asks the State Administrative Board to exercise its statutory authority to increase the statutory maximum per-case fee, while the third (#58) advocates the establishment of a statutory process for regular adjustment of the per-case fee. The ORR concurs with the recommendations made by the ARC in respect to this issue and further recommends that any statutory adjustment process implemented should empower the MLCC exclusively to conduct the review and set the fee.

ORR Recommendation

Recommendation #66

Subject: Single ADA

Recommendation: Michigan is unique among Control States in allowing more than one warehousing and delivery agent. The MLCC should study moving to a single ADA for the warehousing and delivery of spirits. Currently, there are three ADAs serving Michigan and there is no restriction in statute or rules prohibiting entry of others into the market. The scale of the Michigan market (geographic and variety of product) combined with an ADA’s statutory service obligations seem to suggest switching to a single highly capable ADA could take better advantage of economies of scale and not only better maintain service but also control costs. The ORR recommends exploration of this option by the MLCC.

ORR Recommendation

Recommendation #67

Subject: SDDs as “Mini” ADAs

Recommendation: The ARC has recommended (#54) that MCL 436.1205(10) be amended to increase the amount of spirits an on-premises licensee may purchase from an SDD per month. The amount is currently capped at 9 liters per month. Removal of this cap combined with the setting of an appropriate price/discount could produce a range of benefits to retailers, SDDs and ADAs. For retailers, they would be able to address sudden shortages immediately. SDDs could see increases in business although these sales to on-premises licensees would not be at the normal shelf prices. ADAs could see a reduction in split-cases and emergency deliveries to on-premises licensees. Delivery frequency to on premises licensees could be reduced and order minimum requirements increased without inconvenience while

cutting costs by limiting the total number of deliveries and delivery-points. The ORR recommends that the MLCC study this concept.

ORR Recommendation

Recommendation #68

Subject: Clerk/Server Liability

Recommendation: MCL 436.1701 should be amended to make a clerk/server potentially liable for greater fines than are currently assessed for sales to minors and that they should increase with subsequent violations. Their liability is currently limited to \$100 (state civil infraction).

ORR Recommendation

Recommendation #69

Subject: License Fees (General)

Recommendation: The MLCC needs to review current fee levels to determine if they are adequate to support its activities. Fee levels should be updated where necessary and a mechanism should be provided in statute for their automatic adjustment to ensure their ongoing adequacy.

ORR Recommendation

Recommendation #70

Subject: Business Types Eligible for SDM Licenses (R 436.1129)

Recommendation: The MLCC should review the current list of business types eligible for SDM licenses and the gross sales requirement included in the rule to determine if both are still appropriate.

ORR Recommendation

Recommendation #71

Subject: Wine and Spirits Rectification

Recommendation: The MLCC should carefully examine the extent to which small winemakers and distilleries should be allowed to rectify or process wine and spirits purchased from other manufacturers and package and sell the finished products as their own. The expansion of business opportunities for small winemakers and distillers recommended in this report are premised on the importance of developing the wine and spirits *manufacturing* industry in Michigan from the farm field to sale of the Michigan-produced product to a consumer. Statutes and rules should be developed to appropriately regulate this practice consistent with the spirit of the recommendations contained in this report.

ORR Recommendation

Recommendation #72

Subject: Liquor Control Code, Rules and Non-Rule Regulatory Activities (General)

Recommendation: Years of piece-meal changes to the code have resulted in an accumulation of outdated, anachronistic, unclear and duplicative/superfluous language and requirements. Implementation of the recommendation contained in this report presents an opportunity to comprehensively clean up the code. Additionally, the MLCC should continue the work it began with ORR in 2011 to ensure that its rule and non-rule regulatory activities are up to date, simple, fair, and efficient.

ORR Recommendation

APPENDIX A**ISSUE PAPERS FOR FINAL RECOMMENDATIONS**

<u>Recommendation</u>	<u>Subject</u>	<u>Page</u>
1	MLCC Operations - Electronic Communication	A-3
2	MLCC Operations - Enforcement Division	A-4
3	MLCC Operations - Escorting Requirement	A-5
4	MLCC Operations - Mail Communications	A-6
5	MLCC Operations - "Routine" Docket	A-7
6	Licensing - Brewers (Forms)	A-8
7	Licensing - Building, Health and Zoning Compliance [R 436.1003]	A-9
8	Licensing - Closing Packets (General)	A-10
9	Licensing - Closing Packet (Stock Ownership/Membership)	A-11
10	Licensing - Conditionally Approved License	A-12
11	Licensing - Fingerprinting	A-13
12	Licensing - Food Concession Agreements [R 436.1433]	A-14
13	Licensing - Permits	A-15
14	Licensing - Local Conditions	A-16
15	Licensing - Inspections	A-17
16	Licensing - Investigations (Already Licensed Individuals)	A-18
17	Licensing - Investigations (Financing)	A-19
18	Licensing - Investigations (Financing – Retail Licensees)	A-20
19	Licensing - Investigations (Forms)	A-21
20	Licensing - Investigations (General)	A-22
21	Licensing - Investigations (Local Process)	A-23
22	Licensing - Investigations (Staffing)	A-25
23	Licensing - Investigations	A-26
24	Licensing - Investigations (Review Process - Notice of Deficiency)	A-27
25	Licensing - Investigations (Review Process - Review upon Receipt)	A-28
26	Licensing - Investigations (Review Process - Notification of Problem)	A-29
27	Licensing - Investigations (Ownership – Stock Transfers)	A-30
28	Licensing - Investigations (Ownership - Already Licensed Individuals)	A-31
29	Licensing - Quota System [MCL 436.1531(1)]	A-32
30	Licensing - Status of License after Loan Default/Foreclosure [MCL 436.1501]	A-33
31	License Types - Brewers	A-34
32	License Types - Resort	A-35
33	License Types - Economic Development [MCL 436.1521a]	A-36
34	Distribution - Franchise Law (Small Brewers) [MCL 436.1403] Wineries and Distilleries Package	A-37 A-38
35	Definitions – Winemaker [MCL 436.1113(9)]	A-41
36	Definitions – Small Winemaker [MCL 436.1111]	A-42
37	Definitions – Farm Winemaker [MCL 436.1107]	A-43
38	Removal of Liquor from Premises [MCL 436.2021(3)]	A-44
39	Definitions – Small Distiller [MCL 436.1111(9)]	A-45

40	Definitions – Brandy Manufacturer [MCL 436.1105(10)]	A-46
41	Brandy Manufacturer/Small Distiller Restaurant [MCL 436.1603]	A-47
42	Winemaker Restaurant/Brandy Manufacturer, Small Distiller Off-Site Tasting Room [MCL 436.1537]	A-48
43	Retailer Sales [MCL 436.1603]	A-49
44	Catering Permit [MCL 436.1547]	A-50
45	Special License – Source of Purchase Options [R 436.582]	A-51
46	Beer, Wine and Spirits Festivals [MCL 436.1526]	A-52
47	Discrimination against Michigan Manufacturers [MCL 436.1201]	A-53
48	Service at Events held under Special Licenses	A-54
49	“Knowingly Allow” versus “Allow” [MCL 436.1707 and 1901; R436.1011 and 1417]	A-55
50	Retail Advertising [R 436.1315 and 1319]	A-58
51	Hours and Days of Operation [R 436.1403 and 1503]	A-60
52	Sale or Purchase of Alcoholic Liquor for Cash [MCL 436.2013]	A-65
53	Secondary Use – Contests and Advertising Articles [R 436.1321]	A-67
54	Increase the Monthly Cap of 9 Liters that an On-Premise Licensee May Buy from an Off-Premise Licensee [MCL 436.1205(10)]	A-69
55	ADA – Adjustment by MLCC of Per-Case ADA Fee [MCL 436.1205(13)]	A-71
56	ADA – Adjustment by State Administrative Board of ADA Per-Case Fee [MCL 436.1205(13)]	A-73
57	ADA – MLCC Limit Number of Products Available	A-75
58	ADA – Process for Adjustment of ADA Per-Case Fee	A-77
59	Microbrewery Parity Package	A-80
60	Spirits – MLCC System Access	A-84
61	Spirits – Instant Redeemable Coupons	A-85
62	License Fee Disbursement	A-86
63	Beer and Wine Excise Tax Collection [MCL 436.1409 and R 436.1621]	A-87
64	MCL 436.1541 -- Motor Vehicle Fuel Pumps	A-88

FINAL

Recommendation #1

Subject: MLCC Operations – Electronic Communication

Background/Issue: Currently, the mail system is used.

Recommendation: Increase the use of electronic communication. Increase the use of email with applicants, investigators, local law enforcement, and local governing bodies.

Unanimous

Recommendation #2

Subject: MLCC Operations - Enforcement Division

Background/Issue: The MLCC Enforcement Division acts as both the licensing investigation arm as well as the violation enforcement investigators. This system puts investigators in a troubling position because they are under pressure to issue licensing investigations quickly so that people can quickly open up businesses, but the investigators are also the primary enforcement agency for enforcing the liquor laws. Often the licensing investigation function comes second to the enforcement function. Additionally, many investigators are unable to effectively and efficiently handle both functions of the job.

Rationale for Change/Additional Comments: Specialized investigators would improve the licensing investigations and ensure more equalized enforcement.

Recommendation: Separate Enforcement Division into two sections: Licensing Investigation and Violation Enforcement.

<i>Unanimous</i>

FINAL

Recommendation #3

Subject: MLCC Operations – Escorting Requirement

Rationale for Change/Additional Comments: The required escorting of visitors costs the Commission time and lessens productivity because of security guard calls to escort Commission guests.

Recommendation: Eliminate the DMB-required escorting at the Commission’s Lansing Office.

<i>Unanimous</i>

FINAL

Recommendation #4

Subject: MLCC Operations – Mail Communications

Background/Issue: The mail system treats all incoming mail on an equal basis.

Rationale for Change/Additional Comments: One piece of mail could be the one thing that is preventing a final submission of a file to Administration or issuance of a license and that piece of mail may not be read for a week or more, unless the applicant or applicant’s attorney repeatedly contacts the Licensing staff. These repeated contacts to the Licensing staff are time consuming.

Recommendation: Treat incoming documents differently depending on the level of their importance.

<i>Unanimous</i>

FINAL

Recommendation #5

Subject: MLCC Operations – “Routine” Docket

Background/Issue: The “routine” docket involves only a draft order and no detailed syllabus write-up.

Recommendation: Increase the use of “routine” licensing docket. Permit the Licensing Division Analysts to expand applications submitted for the Commission’s review under the “routine” docket. Those applications that are problematic can continue to be fully written up for Commission review.

Unanimous

Recommendation #6

Subject: Rule 436.1103 - Licensing – Brewers (Forms)

Background/Issue: Brewpub, microbrewery, and brewery license applicants are required to submit an application to the federal Alcohol and Tobacco Tax and Trade Bureau (TTB) and receive federal approval before submitting the same information on a completely different set of forms to the MLCC.

By requiring the same information in a different format, the MLCC needlessly doubles the amount of paperwork required by an applicant.

By requiring the completion of the TTB licensing process before accepting an application to the MLCC, the commission doubles the amount of time it takes to receive licensing approval from the State.

Rationale for Change/Additional Comments: The duplicative MLCC licensing application and supporting forms is cumbersome and substantially slows down the licensing process.

This recommendation supports the goals stated in Executive Order 2011 by reducing duplicative requirements and supporting a regulatory environment and regulatory process that is fair, efficient, and conducive to business growth and job creation.

Recommendation: Allow license applicants to submit the same Brewers Notice and supporting documents required by the TTB to the Commission concurrent with their submission to the TTB.

Unanimous

FINAL

Recommendation #7

Subject: R 436.1003 - Licensing – Building, Health and Zoning Compliance

Background/Issue: Law enforcement officials do not have jurisdiction or the ability to certify compliance.

Rationale for Change/Additional Comments: Place responsibility on licensee.

Recommendation: Rescind the rule requiring that local law enforcement officials certify an applicant's compliance with local building, health and zoning regulations.

Unanimous

Recommendation #8

Subject: Licensing – Closing Packets (General)

Background/Issue: The applicants and their attorneys currently have to contact the Licensing staff to ensure the closing packets are completed in a timely fashion. If not for the applicants and attorneys contacting the Licensing staff, the closing packets would take 2-3 weeks to be mailed to applicants.

Rationale for Change/Additional Comments: Elimination of some of the closing requirements would increase efficiency.

Recommendation: Improve efficiency of release of closing packets by simplifying the process. Expand staff cross training and eliminate some of the closing requirements. For example, eliminate financial verification, stock issuance verification, and final inspection.

<i>Unanimous</i>

FINAL

Recommendation #9

Subject: Licensing – Closing Packet (Verification of Stock Ownership/Membership)

Background/Issue: All applicants are required to submit an LC 52 or LC 52a as part of the final closing packet, even if the Enforcement Division has already verified the stock or membership issuance.

Recommendation: Only require verification of stock or membership issuance when applicant did not previously submit the information and it was not verified.

Unanimous

Recommendation #10

Subject: Conditionally Approved License

Background/Issue: MCL 436.1501(1) includes the term “conditionally approved licensee” at two parts of that subsection. I suggest we tag the below proposal on the end of subsection 1, or as a new subsection 2, to expand on the term as it is presently used in statute. Use the current 180 day time frame for completion of the server training requirement as a limit on the length of time a “conditionally approved licensee” can operate the business without final approval. Tying the two concepts together should also bring more attention to the deadline for completing server training (thus negating the need for Hearings & Appeals to hold so many violation hearings on the server training issue) and will ensure that many licensees have their staff trained earlier in the process.

Recommendation: Amend MCL 436.1501 as follows:

“Upon proof of issuance of the Applicant’s current, temporary, or permanent certificate of occupancy by the local unit of government, the filing of an acceptable proof of financial responsibility form, and payment of the applicable licensing fee, an Applicant for a license may request, and the Commission shall grant **or deny the request** within 14 calendar days ~~if requested~~, a conditionally approved retail license of the type requested in the application. The conditionally approved license shall be valid for up to 180 days from the date of issuance. The conditionally approved license shall be immediately suspended, however, should any of the following events occur during the pendency of the license:

- a) The Commission issues a final order denying or approving the application that serves as the basis for the conditional license;
- b) The Applicant fails to maintain adequate proof of its financial responsibility;
- c) The conditionally approved licensee is found responsible for a violation of the Liquor Code resulting in a suspension or revocation of the subject license;
- d) The conditionally approved licensee fails to provide proof of compliance with any server training requirements imposed pursuant to MCL 436.1906.

A conditionally approved license shall not be transferred from its current owner unless the Applicant also files a statement signed by the current owner consenting to the conditional license transfer.”

Unanimous

Recommendation #11

Subject: Licensing - Fingerprinting

Background/Issue: All general partners, corporate shareholders holding 10% or more stock interest in corporations, and members holding 10% or more membership interest in an LLC are fingerprinted.

Rationale for Change/Additional Comments: This change would save time and money for applicants and law enforcement agencies.

Recommendation: Amend the Liquor Control Code to eliminate the fingerprinting requirement and run LEIN, NCIC or ICHAT checks on applicants if complete arrest and conviction information is deemed necessary.

Unanimous

Recommendation #12

Subject: R 436.1433 - Licensing – Food Concession Agreements

Background/Issue: Rule 436.1433 prohibits an on-premises licensee from contracting with another for food operation of the licensed business without getting the Commission’s prior approval. The rule also requires that if the Commission approves the contract for food services, then the on-premises licensee is required to comply with (a) receiving all profits from the sale of liquor, (b) retain control over all portions of the licensed premises, and (c) be responsible for the actions of those persons operating the food business.

Recommendation: Amend the rule to eliminate requiring Commission approval of food concession agreements. Create requirements for a licensee to follow in the rules and place the compliance burden on the licensee. If there are complaints or red flags that are raised relative to the true ownership, then the Commission should investigate.

Unanimous

Recommendation #13

Subject: Licensing - Permits

Recommendation: Allow for immediate issuance of certain permits. Those permits not requiring local law enforcement or local governing body approval should be available immediately upon payment of the fee and completing the application or receipt of the written request without any Commission investigation, local law enforcement recommendations, or Commission order. Permits that this immediate issuance allowance would apply to are:

- Sunday Sales/Sunday Morning Sales
- Additional Bar Permits
- Specific Purpose Permits
- Spirit Consumer Sampling Event Licenses
- Beer & Wine Sampling Event Permits

<i>Unanimous</i>

Recommendation #14

Subject: Licensing – Local Conditions

Background/Issue: The Commission does not allow local governing bodies to place any conditions on a local resolution approval. If local governing bodies attempt to place conditions on a local resolution of approval, the Commission rejects the resolution and the local governing body must go through the resolution process again. There is nothing in the statute that prohibits the Commission from accepting these conditional resolutions.

Rationale for Change/Additional Comments: The Commission does not have an obligation to enforce the conditional resolution; the enforcement of conditional resolutions is a local issue and compliance should be left to the local governing body.

Recommendation: The Commission should be more flexible on local governing body resolutions in allowing conditional resolutions.

Unanimous

FINAL

Recommendation #15

Subject: Licensing - Inspections

Recommendation: Eliminate most final inspections. Except for applications where Commission approval requires specific inventory requirements, final inspections should be done by the local jurisdiction that is responsible for ensuring that a Certificate of Occupancy is issued. If it is necessary, a follow-up enforcement check could be done instead of a final inspection.

Unanimous

Recommendation #16

Subject: Licensing – Investigations (Already Licensed Individuals)

Background/Issue: There are some Enforcement Division investigators who require a thorough reinvestigation of applicants and spouses who are licensed with the Commission. The reinvestigation may include reexamination of driver’s licenses, tax returns, and citizenship papers when reapplying for another license.

Recommendation: Eliminate investigation on individuals already licensed with the Commission. Use the term “currently licensed” or have existing licensees sign a form that says “no changes since last investigated.” LEIN, NCIC or ICHAT checks may be used on existing licensees where it is deemed necessary.

Unanimous

Recommendation #17

Subject: Licensing – Investigations (Financing)

Background/Issue: The MLCC staff must verify finances, but the availability of adequate and legitimate finances is already verified by the Enforcement investigation.

Rationale for Change/Additional Comments: The availability of adequate finances is verified through the Enforcement Investigation. Eliminating verification of finances would simplify the closing process for applicants and MLCC staff and would also eliminate the need for most final inspections.

Recommendation: Eliminate pre-licensing verification of finances by the Commission. The Enforcement Division could conduct a follow-up investigation to verify the sources of finances if necessary.

Unanimous

Recommendation #18

Subject: Financial Review of Retail License Applicants

Background/Issue: R 436.1105(1)(b) requires an applicant show the existence of adequate legitimate and verifiable financial resources for the establishment and operation of the proposed licensed business. Current MLCC investigation practice often requires applicants go to extraordinary measures to “verify” the source of funding for a new or transferred retail licensed business. Additionally, R 436.1121(2) specifies the approved funding sources where “all funds” must originate.

Rationale for Change/Additional Comments: The current need to “verify” all funding sources, and the limitations imposed on what is an “acceptable” funding source, often cause significant delays in MLCC investigations. This creates significant work for the investigators and substantial difficulty for applicants who did not know in advance that all funds accumulated in advance of the business purchase will need to be “verified” at some later date. Proof of funding is also difficult to assemble when multiple family members or business associates contribute financially to launching a new business without proper legal documentation of the loans/gifts. In almost all of these transactions, however, the funding sources are ultimately deemed “legitimate” and the license is eventually approved. This proposed rule change will relieve some of the initial proof burden on applicants and replace it with a later proof obligation if the MLCC audit determines there is reason to suspect the affidavit or funding was done improperly.

Recommendation: Amend the above Rules by eliminating the word “verifiable.”

Add language to R 436.1105(1) indicating the applicant may comply with the rule by providing evidence in the form of a sworn affidavit attesting to the source and legitimacy of funds used to buy or start the business. Add additional language to R 436.1105 and R 436.1121 stating that an affidavit shall not be required for applicants who are publicly traded corporations, LLC or partnership, or subsidiaries of such a publicly traded entity. Use the MLCC audit process to later determine if any applicant has submitted false or incomplete funding information, and take appropriate remedial action if necessary at that point.

<i>Unanimous</i>

Recommendation #19

Subject: Licensing – Investigations (Forms)

Background/Issue: The MLCC staff creates the forms that are necessary components of the investigation package instead of having the Oracle database create all the forms from information already in the database.

Rationale for Change/Additional Comments: The current process used is labor intensive and it also results in more errors.

Recommendation: Auto-generate forms from MLCC database. The system should be able to automatically create all of the forms by identifying the type of application.

<i>Unanimous</i>

Recommendation #20

Subject: Licensing – Investigations (General)

Recommendation: Waive unnecessary investigations. Such unnecessary investigations may include investigations of: corporate stock interest transfers to existing stockholders or back to the corporation itself, an LLC transferring membership interest to an existing member or back to the LLC itself, and a sole proprietorship transferring to an LLC.

Unanimous

Recommendation #21

Subject: Local Legislative Body Approval and Local Government Approval Timeframe

Background/Issue: Statute requires the local legislative body to approve license. In many communities, applications are processed through the city clerk’s office. The clerk must send it through the appropriate local departments and then to the city council/commission for final approval. A resolution must be created, has to be published in the press and has to have a certified copy created. It’s rare that a commission would not approve something that all departments are okay with. It’s almost a rubber stamp.

Rationale for Change/Additional Comments: Giving a clerk or other administrative officer the ability to approve licenses would speed up the process and also result in cost savings for a local unit.

Recommendation:

1. Local legislative bodies should be allowed to delegate approval of a license to the clerk or other administrative officer and a checklist should be developed to assist the individual in processing license applications.

<p><i>Yeas</i> – Borrello, Burzych, Coe, Dennis, Deloney, Gobler, Greff, Harkins, McGovern, Moody, Smith, Telliga, Zimmer (13) <i>Nays</i> – Arabo, Fitzpatrick, O’Niel (3) <i>Absent/Not Voting</i> – Alexander, Brown, Coleman, Keenoy, Lambrecht (5)</p>

2. Local governments should be required to follow the same process and use the same forms as the Commission and they must provide a reason for any denial of a license. Local law enforcement approval should be one of the elements included in the check list.

<p><i>Yeas</i> – Arabo, Borrello, Burzych, Coe, Dennis, Deloney, Fitzpatrick, Gobler, Greff, Harkins, Lambrecht, McGovern, Moody, O’Niel, Smith, Telliga, Zimmer (17) <i>Nays</i> – None <i>Absent/Not Voting</i> – Alexander, Brown, Coleman, Keenoy (4)</p>

3. An incentive process should be established to provide local governments with 100 percent of their share of the licensing fee if they complete their review of the license within 30 days of their receipt of the Commission-prepared resolution regarding a license. Their share would be reduced on a sliding scale if their review takes longer than 30 days and could not exceed 30 percent if it took more than 89 days.

Yeas – Arabo, Borrello, Burzych, Coe, Dennis, Deloney, Fitzpatrick, Gobler, Greff, Lambrecht, McGovern, Moody, O’Niel, Smith, Telliga, Zimmer (16)

Nays – Harkins (1)

Absent/Not Voting – Alexander, Brown, Coleman, Keenoy (4)

4. Local license application fees should not exceed the application fee required by the Commission.

Yeas – Arabo, Borrello, Brown, Burzych, Coe, Dennis, Deloney, Gobler, Greff, Lambrecht, McGovern, Moody, O’Niel, Smith, Telliga, (15)

Nays – Fitzpatrick, Harkins, Zimmer (3)

Absent/Not Voting – Alexander, Coleman, Keenoy (3)

Recommendation #22

Subject: Licensing – Investigations (Staffing)

Background/Issue: There are “temporary” staffing issues that appear to backlog the licensing investigations in two ways: authorizing investigations and releasing closing packets.

Recommendation: The licensing staff could be more fully cross trained for more flexibility so that the staff can be shifted to different job functions that the work flow requires and address the different backlogs in different areas at various times.

<i>Unanimous</i>

Recommendation #23

Subject: Licensing - Investigations

Recommendation: Conduct minimal investigations when appropriate. For example, when a limited liability company or corporation adds a new member or stockholder or a partnership adds a new general partner, these acts should only result in an investigation of the new member, stockholder, or partner. In these instances there should not be a full investigation of the entity, establishment, present ownership, etc.

Unanimous

Recommendation #24

Subject: Licensing – Investigations (Review Process)

Background/Issue: When an application is incomplete when submitted, the Commission sends out a Notice of Deficiency.

Rationale for Change/Additional Comments: The Notice of Deficiency for incomplete applications is described as time consuming and labor intensive.

Recommendation: Authorize “incomplete” applications for investigations. When an application is incomplete when submitted, authorize the application for investigation and have the Enforcement Division secure the missing information or collect the fee shortages at the final license issuance.

<i>Unanimous</i>

Recommendation #25

Subject: Licensing – Investigations (Review Process)

Background/Issue: The Licensing staff waits to review applications until all components, which includes enforcement investigator’s report, local law enforcement recommendation, and local governing body resolution, are submitted.

Rationale for Change/Additional Comments: By reviewing the applicant’s components as submitted, the Licensing staff is able to determine if something is wrong with a component and let the applicant know right away, instead of waiting until all components are submitted to notify the applicant.

Recommendation: Review licensing applications and investigation components as the applicant submits the different components.

<i>Unanimous</i>

Recommendation #26

Subject: Licensing – Investigations (Review Process)

Background/Issue: Many Enforcement investigators do not notify the applicant or the applicant’s attorney when the investigator finds a problem during the licensing investigation, such as inadequate or unverifiable finances or improper provisions within a purchase agreement. These problems may result in a negative recommendation and denial of a license that could be avoided if the applicant or the applicant’s attorney is advised of the problem and allowed the opportunity to address it.

Rationale for Change/Additional Comments: The current process unnecessarily results in time delays and possible appeal hearings that may be due to a misunderstanding of the transaction.

Recommendation: Advise applicant and the applicant’s attorney of investigation problems.

<i>Unanimous</i>

Recommendation #27

Subject: Licensing – Investigations (Ownership)

Rationale for Change/Additional Comments: Often, applicants and the attorneys must recreate lost or non-existent documents for transactions that were completed quite some time ago.

Recommendation: Waive the multistep “old” stock transfer investigations. Particularly, waive these investigations dealing with past transactions where a considerable amount of time has passed and the participants have since changed. A more common-sense approach should be used to determine whether an investigation is necessary.

Unanimous

Recommendation #28

Subject: Licensing – Investigations (Ownership)

Background/Issue: The Enforcement Division conducts full scale investigations on a current licensed entity when it is applying to transfer the business to another entity. This may entail examination of the corporate or LLC record book, tax returns, business checking accounts, receipts, and insurance policies.

Recommendation: Eliminate the present ownership investigation. Investigate only the prospective new owner and conduct a present ownership investigation if deemed necessary by indications of an illegal transfer of ownership.

Unanimous

Recommendation #29

Subject: MCL 436.1531(1) – Licensing – Quota System

Background/Issue: MCL 436.1531(1) authorizes on-premises licenses that are held in escrow to be transferred intra-county, within the county of issuance. Where an on-premises escrow license is transferred, the license is still counted against the quota of the governmental unit where the license was first issued, not against the governmental quota where the license is transferred. MCL 436.1531(1) limits intra-county transfers to licenses in escrow only.

Rationale for Change/Additional Comments: This change will help expand the availability of licenses in certain areas.

Recommendation: Escrowed on-premises licenses should be transferable between adjacent counties subject to a five-year limitation on subsequent inter-county transfers. A fee of \$10,000 should be assessed for this type of transfer.

Unanimous

Recommendation #30

Subject: MCL 436.1501 – Status of License after Loan Default/Foreclosure

Background/Issue: Banks take security interests in liquor licenses and take back the license in the event of default. Sometimes, when banks foreclose on their security interest, the MLCC staff will require a full investigation into the bank, even though the bank only holds the license as a place-holder to expedite the transfer to the purchaser. However, some banks do not want to disclose their corporate structure, ownership, etc. to the MLCC. These banks do not foreclose on the liquor license or may forego realizing value from their security.

Rationale for Change/Additional Comments: The investigation process revisions will promote business in Michigan and make Michigan a more “business friendly” state. These revisions may make the investigation process more efficient.

Recommendation: Allow banks to hold a license following judicial or non-judicial foreclosure for record purposes only. Do not require the bank to be investigated.

Amend MCL 436.1501 to read as follows:

“The commission may approve a receiver or trustee appointed by a court of competent jurisdiction or a secured party that forecloses on its security interest in the liquor license to operate the licensed establishment of a licensee.”

Unanimous

Recommendation #31

Subject: License Types – Brewers

Background/Issue: Current law unnecessarily forces small brewers to choose between holding a liquor license (brewpubs) and distributing their beer (microbreweries). This places microbreweries at a competitive disadvantage with other on-premise licensees by artificially restricting their offerings and it limits the growth of brewpubs by denying them the opportunity to increase their production and profitability through distribution.

Since the federal government and many other states place no such restrictions on brewery licensees, the current MLCC restrictions exceed national and regional compliance requirements and standards and create a regulatory environment that is unfair, inefficient, and a hindrance to business growth and job creation.

Rationale for Change/Additional Comments: Combining the two small brewer licenses into a single license would

- simplify and streamline licensing in the state
- remove unnecessary and overly burdensome restrictions thereby encouraging business growth and job creation
- Remove a competitive disadvantage currently imposed on Michigan brewers *vis-à-vis* brewers in neighboring states.

Recommendation: Replace the current microbrewer and brewpub licenses with a single small brewer’s license which combines the rights of the two current licenses to allow the small brewer to:

- brew not more than 30,000 barrels across all locations (based on the current maximum production for a microbrewer)
- hold a liquor license
- hold a small wine-makers and micro-distiller’s license
- package and distribute through the three tier system
- hold a specially designated merchant license

Unanimous

Recommendation #32

Subject: License Types – Resort

Background/Issue: The number of Resort Licenses should be increased to meet the needs of areas experiencing growth. Currently, only 550 are available. More licenses should be added to this number to promote economic growth in areas of development where there is a shortage of readily available licenses. This can help boost tourism/economic growth in areas of need.

Currently, a maximum of five non-transferable On-Premises Resort Licenses are granted each year. Adding to this number would give local chambers of commerce a vital tool to help with reinvestment in their communities. To obtain one these licenses, an individual or company must invest at least \$75,000. Increasing the availability of these licenses will help stimulate economic development. MCL 436.1531(3).

Currently, a maximum of 15 Resort Economic Development Licenses are issued each year. Adding to this number would give local chambers of commerce a vital tool to help with reinvestment in their communities. To obtain one these licenses, an individual or company must invest at least \$1.5 million. Increasing the availability of these licenses will help stimulate economic development and tourist/convention business as well. MCL 436.1531(4).

Rationale for Change/Additional Comments: The current options for obtaining a non-transferable on-premises license do not adequately address the needs and circumstances of certain types of businesses (chain restaurants, particularly) and finding a quota license may be difficult and expensive. The amount of investment required should be greater than that for Sec. 531(3) -- \$75,000, but less than that required under Sec. 531(4) -- \$1.5 million. The investment requirement with an appropriately high fee is needed to protect the investments of existing on-premises license holders. Some of the fee revenue should be earmarked for local law enforcement (it currently is paid into the local unit's general fund).

Recommendation: Amend the Liquor Control Code to annually allow up to 40 on-premises licenses where the licensee has invested at least \$500,000. The fee for this license should be set at \$25,000 (\$5,000 is earmarked for local law enforcement).

Unanimous

Recommendation #33

Subject: MCL 436.1521a – License Types – Economic Development

Background/Issue: MCL 436.1521a limits redevelopment project area and development district licenses to cities only.

Rationale for Change/Additional Comments: Expanding these licenses to villages and townships will likely make more of the licenses available in areas throughout the State. These changes will help expand the availability of licenses in certain areas and expand the existing quota system.

Recommendation: Amend the statute to make economic development liquor licenses available to villages and townships.

<p><i>Yeas</i> – Arabo, Borrello, Brown, Burzych, Coe, Dennis, Deloney, Fitzpatrick, Gobler, Greff, Lambrecht, McGovern, Moody, O’Niel, Telliga, Zimmer (16)</p> <p><i>Nays</i> – Harkins, Smith (2)</p> <p><i>Absent/Not Voting</i> – Alexander, Coleman, Keenoy (3)</p>

Recommendation #34

Subject: MCL 436-1403 -- Distribution - Franchise Law (Small Brewers)

Background/Issue: Franchise laws when applied to small breweries comprising a small portion of a wholesaler’s book of business give wholesalers undue bargaining power over their small suppliers and create an unfair regulatory environment which causes economic hardship for small brewers and stifles competition and access to market.

Rationale for Change/Additional Comments: Franchise laws that were wisely put in place to protect wholesalers from the undue bargaining power of their largest suppliers need to be updated to protect small suppliers from that same undue bargaining power.

Small brewers and wholesalers should be free to establish enforceable contracts between the parties that both parties agree are fair and equitable. And small brewers should have the right to discontinue or re-negotiate the terms of their contracts as their business grows, their needs evolve, and they create greater brand equity.

Exempting any brewer contributing less than 3% of a wholesaler's volume would accomplish the goal of the franchise law to maintain a free an independent distribution tier while still supporting fair and unencumbered free market competition.

Recommendation: Exempt from the Franchise Law contracts between a wholesaler and a microbrewer *or small winemaker* where that microbrewer’s *or small winemaker’s* volume through the wholesaler comprises less than 3% of that wholesaler’s book of business measured using case-equivalents. A “microbrewer” means a brewer producing less than 30,000 barrels/year. A “*small winemaker*” means a winemaker producing no more 50,000 gallons/year in this state.

***ORR recommended that this exemption be expanded to included small winemakers as indicated in italics above.*

Yeas – Borrello, Brown, Burzych, Coleman, Coe, Dennis, Gobler, Surprise, Smith, Zimmer (10)

Nays – Arabo, Deloney, Keenoy, McGovern, Moody, O’Niel, Telliga (7)

Absent/Not Voting – Alexander, Fitzpatrick, Harkins, Lambrecht (4)

Subject: Model Winery/Distillery Law

WINERY WHITE PAPER - INTRODUCTION

We are now one of the top-10 wine producing states, and Michigan wines have grown to 6% of total wine consumption in Michigan. An achievable and realistic goal for Michigan wines would be to reach 10% of total wine consumption. There are over 6,000 wineries in the United States, and Michigan has only about 50 wineries that are actually producing for commercial sales. The top 200 of the 6,000 wineries (mostly from CA, NY, OR, PA, VA and WA) produce and sell 90% of all United States wines. The top 10 Michigan wineries produce and sell 80% of Michigan wines primarily through Michigan distributors. Smaller Michigan wineries currently produce only 20% of wines and are primarily dependent upon direct sales until they reach a volume to go into Michigan's distributor network.

Wineries have been established in all 50 states. They introduce a wine culture to the consumer, utilize locally grown products and provide considerable economic impact on tourism and rural economies. Most wine producing states have adopted local wine regulatory systems based on the Wine America's Model Winery Law. The Model Winery Law has provided a level playing field for in-state wineries and protects states from out-of-state discrimination challenges. There have not been nor will there be any discrimination challenges from out-of-state wineries as wine producing states have granted similar privileges to their in-state wineries. The latest report of other state provisions is from 2002; there have been considerable additions since that time. Michigan has already enacted many of the model winery recommendations, and with additional changes, will keep us among the top10 wine producing states, reaching 10% of the wine consumed in Michigan by growing at a rate of 10% per year, primarily from small and farm winemakers.

LICENSES (Add to Definitions)

Michigan now provides two types of winery licenses: 1) Winemaker and 2) Small Winemaker. These should be left in place and a third type added: 3) Farm Winemaker. Each licensee would have different production requirements. Local units of government would determine which winery license(s) they would allow in their jurisdiction.

1. Winemaker means a person licensed by the commission who principally manufactures and bottles wine in this state.
2. Small Winemaker means a person who principally manufactures and bottles not more than 50,000 gallons of wine in one (1) calendar year in this state.
3. Farm Winemaker means a person manufacturing and bottling wine principally from fruits and other agricultural products harvested in this state.

PRODUCTION (Currently allowed)

A winery licensee may, produce, blend, bottle, store, transport or export wines. The licensee may also import wines in bulk and import bottled wine of brands owned by the licensee. The licensee may purchase and have distilled spirits on the premises for purposes of fortification. (50)

SALES PRIVILEGES (Currently allowed unless underlined) (states allowing as of 2002)

1. To export wines to licensees and consumers subject to the laws and regulations of the receiving state. (50)
2. To sell wines to distributors. (50)
3. To sell wine at wholesale to licensed retailers. (39)
4. To sell wines at wholesale to other wineries. (22)
5. To sell wines at retail to consumers for consumption on or off the licensed premises. (50)
6. To sample and sell by the glass, by the bottle, or by the case, wine produced in-state for consumption on or off the premises at the production site (50) and at licensed off-site tasting rooms (27)
7. To operate tasting rooms singly (50) or jointly with other Michigan producer licensees. (22)
8. To provide samples complimentary (50) or for a fee. (19)
9. To direct ship to consumers remote from the winery. (23)
10. To sell wine made by that winemaker in a restaurant for consumption on or off the premises if the restaurant is owned by the winemaker or operated by another person under an agreement approved by the commission and if on property of the winery or on property contiguous to the winery. To sell alcoholic beverages not normally sold by the winery if purchased through an authorized distribution agent of the state. (37)
11. To sell wine for on- and off-premise consumption at on-site events, subject to regulations as applied to similar events held elsewhere in the state. (50)
12. To sell wine for on- and off-premise consumption at special events licenses, subject to regulation as applied to similar events held elsewhere in the state. (26)
13. To donate wine to non-profit, charitable and government sponsored fundraising events. (not reported)
14. To sell wine for off premises consumption at farm markets subject to regulations of the commission.

DISTILLERIES WHITEPAPER - INTRODUCTION

For a number of years Michigan has authorized wineries to hold a Brandy Manufacturer license to produce brandies from fruit. A second category was then established for a Small Distiller license to produce spirits from grain not exceeding annually 60,000 gallons of all brands combined. Michigan spirits production has not reached more than a one half of one percent share of the large Michigan spirits market, and Michigan distillers are struggling to gain any market share. The reason is simple; while Michigan spirits are being produced by over a dozen commercial distilleries, they are producing

unknown brands in a marketplace dominated by large distillers with long established brand franchises. In addition established distillers are quick to launch brand extensions and new products in the Michigan market which has resulted in over 5,500 products listed in the state distribution system compared to about 30 products listed from Michigan distillers. Our distilling industry is legislated to be a small industry and will remain so.

Michigan distillers share many of the characteristics of Michigan wineries. They need to develop initial sales directly to consumers to develop any consumer franchise. Many of their products are specialty items that will never sell in large quantities. They produce their products from locally grown fruit and grains and therefore provide a value-added agricultural opportunity as well as contributing to tourism and the local economy.

Recognizing that Michigan distillers are mandated by statute and by their products to remain small, the Legislature has provided for many of the same retail privileges granted to Michigan wineries. These sales privileges could be expanded to give Michigan distillers improved market access and, more importantly, an opportunity to become profitable small business entities creating jobs and investment within Michigan. Recommendations submitted do not challenge the state's existing ADA system as Michigan distillers continue to be obligated to utilize the state system for sales beyond their licensed premises.

SALES PRIVILEGES (Currently allowed unless underlined)

1. To export spirits to licensees and consumers subject to the laws and regulations of the receiving state.
2. To sell to state for distribution through state ADA system.
3. To sell spirits at retail price determined by the commission to consumers for consumption on or off the licensed premises.
4. To sample and sell by the glass, by the bottle, or by the case, spirits produced in-state for consumption on or off the premises at the production site and at licensed off-site tasting rooms.
5. To operate tasting rooms singly or jointly with other Michigan producer licensees.
6. To provide samples complimentary or for a fee.
7. To sell spirits made by that spirits producer in a restaurant for consumption on or off the premises if the restaurant is owned by the spirits producer or operated by another person under and agreement approved by the commission, at the distillery or on property contiguous to the distillery. To sell alcoholic beverages not normally sold by the spirits producer if purchased through an authorized distribution agent of the state.
8. To sell spirits for on and off premise consumption to special events licenses subject to regulation as applied to similar events held elsewhere in the state.
9. To donate spirits to non-profit charitable and government-sponsored fundraising events at a price established by the commission.

Recommendation #35

Subject: MCL 436.1113(9) - Winemaker Definition

Background/Issue: MCL 436.1113(9) “Winemaker” definition is not as clear as Sec. 105(10) definition of “Brandy Manufacturer” as to the role of the Commission.

Rationale for Change/Additional Comments: Clarify the statute.

Recommendation: Amend MCL 436.1113(9) to define a “Winemaker” as “a person licensed by the commission who principally manufactures and bottles wine in this state. A winemaker may produce, blend, bottle, store and transport wines. A winemaker may also import wines in bulk and import bottled wine of brands owned by the winemaker. The winemaker may purchase and have distilled spirits on the premises for purposes of fortification. The commission may approve a winemaker to sell wine which it manufactures for export out of the state, to a wholesaler, to another Michigan winery, to a retailer, to a consumer by direct shipment and at retail for on and off premises consumption at its licensed premises or at other premises authorized in this act.”

Yeas – Borrello, Brown, Burzych, Coe, Dennis, Deloney, Gobler, Greff, Harkins, Keenoy, Lambrecht, O’Niel, Smith, Telliga, Zimmer (15)

Nays – Arabo, Fitzpatrick, McGovern (3)

Absent/Not Voting – Alexander, Coleman, Moody (3)

Recommendation #36

Subject: MCL 436.1111(10) - Small Winemaker Definition

Background/Issue: Definition can be broadened to give clarity (Similar to “brandy manufacturer”).

Rationale for Change/Additional Comments: Clarify the rights granted by the license.

Recommendation: Amend MCL 436.1111(10) to define a “Small Winemaker” as “a person who principally manufactures and bottles not more than 50,000 gallons of wine in one (1) calendar year in this state. A small winemaker may produce, blend, bottle, store and transport wines. A winemaker may also import wines in bulk and import bottled wine of brands owned by the winemaker. The winemaker may purchase and have distilled spirits on the premises for purposes of fortification. The commission may approve a small winemaker to sell wine which it manufactures for export out of the state, to a wholesaler, to another Michigan winery, to a retailer, to a consumer by direct shipment and at retail for on and off premises consumption at its licensed premises or at other premises authorized in this act.”

Yeas – Borrello, Brown, Burzych, Coe, Dennis, Deloney, Gobler, Greff, Harkins, Keenoy, Lambrecht, O’Niel, Smith, Telliga, Zimmer (15)

Nays – Arabo, Fitzpatrick, McGovern (3)

Absent/Not Voting – Alexander, Coleman, Moody (3)

Recommendation #37

Subject: MCL 436.1107 – Farm Winemaker Definition

Background/Issue: To create a new “farm winery” license.

Rationale for Change/Additional Comments: Encourage local agriculture.

Recommendation: Amend MCL 436.1107 to add the definition of “Farm Winemaker” which means “a winemaker manufacturing or bottling wine principally from fruits and other agricultural products harvested in this state. The Director of the Department of Agriculture and Rural Development shall determine in years of crop failure, the percent of loss, and allow a certain additional percent, based on the prior calendar year’s production, to be imported from out-of-state and used in the production of wine by the farm winemaker. If in the first five (5) years of operation, the winery may use a greater quantity of imported fruit, than is normally permitted under state law, in the production of its wine. A farm winemaker may produce, blend, bottle, store and transport wines. A winemaker may also import wines in bulk and import bottled wine of brands owned by the winemaker. The winemaker may purchase and have distilled spirits on the premises for purposes of fortification. The commission may approve a farm winemaker to sell wine which it manufactures for export out of the state, to a wholesaler, to another Michigan winery, to a retailer, to a consumer by direct shipment and at retail for on and off premises consumption at its licensed premises or at other premises authorized in this act.”

Yeas – Borrello, Brown, Burzych, Coe, Dennis, Deloney, Gobler, Greff, Harkins, Keenoy, Lambrecht, O’Niel, Smith, Telliga, Zimmer (15)

Nays – Arabo, Fitzpatrick, McGovern (3)

Absent/Not Voting – Alexander, Coleman, Moody (3)

Recommendation #38

Subject: MCL 436.2021(3) - Removal of Liquor from Premises

Background/Issue: To allow an individual to remove partially consumed bottles of wine from a winemaker.

Rationale for Change/Additional Comments: To clarify the act.

Recommendation: Amend MCL 436.2021(3) to read, in part, “A vendor licensed to sell wine on the premises may allow an individual who has purchased a meal and partially consumed a bottle of wine with the meal, to remove the partially consumed bottle from the premises upon departure. This subsection does not allow the removal of any additional unopened bottles of wine unless the vendor is licensed as a specially designated merchant, **winemaker, small winemaker or farm winemaker.**”

Yeas – Borrello, Brown, Burzych, Coe, Dennis, Deloney, Gobler, Greff, Harkins, Keenoy, Lambrecht, O’Niel, Smith, Telliga, Zimmer (15)

Nays – Arabo, Fitzpatrick, McGovern (3)

Absent/Not Voting – Alexander, Coleman, Moody (3)

Recommendation #39

Subject: MCL 436.1111(9) - Small Distiller Definition

Background/Issue: Definition should be broadened to give clarity (similar to “brandy manufacturer”.)

Rationale for Change/Additional Comments: Clarify the rights granted by the license.

Recommendation: Amend 436.1111(9) to define a “Small Distiller” as “a manufacturer of spirits annually manufactured, **rectified or blended** in Michigan not exceeding 60,000 gallons of spirits of all brands combined. **The commission may approve a small distiller to sell its spirits for export from the state, for distribution through the ADA system, to another Michigan distillery, and at retail for on and off premises consumption, at its licensed premises or at other premises authorized in this act.”**

Yeas – Borrello, Brown, Burzych, Coe, Dennis, Deloney, Gobler, Greff, Harkins, Keenoy, Lambrecht, O’Niel, Smith, Telliga, Zimmer (15)

Nays – Arabo, Fitzpatrick, McGovern (3)

Absent/Not Voting – Alexander, Coleman, Moody (3)

Recommendation #40

Subject: MCL 436.1105(10) - Brandy Manufacturer Definition

Background/Issue: The definition should be broadened to give clarity.

Rationale for Change/Additional Comments: Clarify the rights granted by the license.

Recommendation: Amend MCL 436.1105(10) to define a “Brandy Manufacturer” as “a person licensed under this act to engage in the manufacturing, rectifying or blending or both, of brandy only and no other distilled spirit. Only a licensed winemaker or a small winemaker is eligible to be a brandy manufacturer. The commission may approve a brandy manufacturer to sell **brandy which it manufactures for export from the state, for distribution through the ADA system, to another Michigan distillery, and at retail, for on and off premises consumption**, at its licensed premises or at other premises authorized in this act.”

Yeas – Borrello, Brown, Burzych, Coe, Dennis, Deloney, Gobler, Greff, Harkins, Keenoy, Lambrecht, O’Niel, Smith, Telliga, Zimmer (15)

Nays – Arabo, Fitzpatrick, McGovern (3)

Absent/Not Voting – Alexander, Coleman, Moody (3)

Recommendation #41

Subject: MCL 436.1603 - Brandy Manufacturer/Small Distiller Restaurant

Background/Issue: To establish uniform conditions for brandy manufacturers and small distillers.

Rationale for Change/Additional Comments: Parity.

Recommendation: Amend MCL 436.1603(5) to read “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 **or contiguous to a** premises where the brandy manufacturer or small distiller is licensed. Brandy or spirits sold for consumption off the premises shall be sold at the uniform price established by the commission. **A license for alcoholic beverages not produced by the brandy manufacturer or small distiller may be acquired for a restaurant for on and off premises sale, and alcoholic beverages must be purchased through an authorized distribution agent of the state.**”

Amend MCL 436.1603(6) to read “The commission shall allow a small distiller **or brandy manufacturer** to sell brands of spirits it manufactures for consumption on **any** licensed premises of that distillery or **brandy manufacturer.**”

Yeas – Borrello, Brown, Burzych, Coe, Dennis, Deloney, Gobler, Greff, Harkins, Keenoy, Lambrecht, O’Niel, Smith, Telliga, Zimmer (15)

Nays – Arabo, Fitzpatrick, McGovern (3)

Absent/Not Voting – Alexander, Coleman, Moody (3)

Recommendation #42

Subject: MCL 436.1537 - Winemaker Restaurant/Brandy Manufacturer, Small Distiller Off-Site Tasting Room

Background/Issue: To establish uniform conditions for brandy manufacturers and small distillers.

Rationale for Change/Additional Comments: Parity.

Recommendation: Amend MCL 436.1537(2) to read “A winemaker, **small winemaker, or farm winemaker** may sell wine made by that winemaker in a restaurant for consumption on or off the premises if the restaurant is owned by the winemaker or operated by another person under an agreement approved by the commission and located on **or contiguous to a** premises where the winemaker is licensed.”

Amend MCL 436.1537(4) to read “A winemaker, **small winemaker or farm winemaker**, with the prior written approval of the commission, may conduct wine tastings of wines made by that winemaker for consumption on and off the premises at a location other than the premises where the winemaker is licensed to manufacture wine under the following conditions:

....

c) The wine tasting locations shall be considered licensed premises and the winemaker may charge for samples.”

Amend MCL 436.1537(9) to read “A brandy manufacturer or small distiller with the prior written approval of the commission, may conduct tastings of brandy and spirits made by that brandy manufacturer or small distiller and may sell the brandy and spirits made by that brandy manufacturer or small distiller for consumption on and off the licensed premises at a location other than the licensed premises where the brandy manufacturer or small distiller is licensed to manufacture brandy or spirits under the following conditions:

....

c) The brandy and spirits tasting locations shall be considered licensed premises, **and the brandy manufacturer or small distiller may charge for samples.**”

Yeas – Borrello, Brown, Burzych, Coe, Dennis, Deloney, Gobler, Greff, Harkins, Keenoy, Lambrecht, O’Niel, Smith, Telliga, Zimmer (15)

Nays – Arabo, Fitzpatrick, McGovern (3)

Absent/Not Voting – Alexander, Coleman, Moody (3)

Recommendation #43

Subject: MCL 461.1603(6) - Retailer Sales

Background/Issue: Small distillers are allowed to sell brands they manufacture for consumption on the licensed premises of the distillery. Brandy manufacturers, winemakers and small wine makers are not.

Rationale for Change/Additional Comments: All of these small manufacturers should be treated similarly.

Recommendation: Amend MCL 463.1603(6) to read “The commission shall allow a small distiller, **brandy manufacturer, winemaker, small winemaker and farm winemaker** to sell the brands of spirits and wines it manufactures for consumption on a licensed premises of that distillery and winery.”

Yeas – Borrello, Brown, Burzych, Coe, Dennis, Deloney, Gobler, Greff, Harkins, Keenoy, Lambrecht, O’Niel, Smith, Telliga, Zimmer (15)

Nays – Arabo, Fitzpatrick, McGovern (3)

Absent/Not Voting – Alexander, Coleman, Moody (3)

FINAL

Recommendation #44

Subject: MCL 436.1547 - Catering Permit

Background/Issue: Allow Michigan manufacturers to sell products they produce to private events.

Rationale for Change/Additional Comments: To level the playing field.

Recommendation: Amend MCL 436.1547(1)(b) to read “Catering Permit” means “a permit issued by the commission to a specially designated distributor, specially designated merchant, on premise licensee, **winemaker, small winemaker, farm winemaker, brandy manufacturer, small distiller, microbrewer, brewpub** for the sale of beer, wine and spirits.”

Amend MCL 436.1547(2) to add **small distiller**.

Amend MCL 436.1547(3) to add **winemaker, small winemaker, farm winemaker, brandy manufacturer, small distiller, microbrewer, and brewpub**.

Yeas – Borrello, Brown, Burzych, Coe, Dennis, Deloney, Gobler, Greff, Harkins, Keenoy, Lambrecht, O’Niel, Smith, Telliga, Zimmer (15)

Nays – Arabo, Fitzpatrick, McGovern (3)

Absent/Not Voting – Alexander, Coleman, Moody (3)

FINAL

Recommendation #45

Subject: R 436.582 - Special Licenses, Source of Purchase Options

Background/Issue: Special license holders should be allowed to purchase product directly from Michigan manufacturers.

Rationale for Change/Additional Comments: Will allow Michigan manufacturers to promote their products at events to develop consumer awareness.

Recommendation: Amend R 436.582(2)(c) to add **brandy manufacturer, small distiller, winemaker, small winemaker, and farm winemaker.**

Yeas – Borrello, Brown, Burzych, Coe, Dennis, Deloney, Gobler, Greff, Harkins, Keenoy, Lambrecht, O’Niel, Smith, Telliga, Zimmer (15)

Nays – Arabo, Fitzpatrick, McGovern (3)

Absent/Not Voting – Alexander, Coleman, Moody (3)

Recommendation #46

Subject: MCL 436.1526 - Beer Festival

Background/Issue: To establish similar festivals for wines and spirits.

Recommendation: Amend MCL 436.1526(1) to read “The commission may issue a special license under this section to any organization conducting beer, **wine and spirits festivals**. **The application shall conform to the following:**

a) Be submitted by a non-profit entity composed primarily of brewers, microbrewers and brewpubs, by brandy manufacturers, small distillers, by winemakers, small winemakers or farm winemakers as determined by the commission.

b) Involve an event having for its primary purpose the showcasing of beer, wine and spirits and their production.”

Amend MCL 436.1526(3) to read “The holder of a special license issued under this section may buy a quantity of beer, **wine or spirits** as determined appropriate under the circumstances by the commission, directly from any licensed **manufacturer or** brewpub for consumption only at the licensed event.”

Amend MCL 436.1526(4) to read “As used in this section and section 413, “beer, **wine and spirits festival**” means an event at which the various types **and kinds** of beer, **wine and spirits** and the production of **these beers, wines and spirits** are showcased to the general public and at which the public can purchase and sample the beer, wine and spirits being showcased for consumption on the licensed premises.”

Yeas – Borrello, Brown, Burzych, Coe, Dennis, Deloney, Gobler, Greff, Harkins, Keenoy, Lambrecht, O’Niel, Smith, Telliga, Zimmer (15)

Nays – Arabo, Fitzpatrick, McGovern (3)

Absent/Not Voting – Alexander, Coleman, Moody (3)

Recommendation #47

Subject: MCL 436.1201 - Discrimination against Michigan Manufacturers

Background/Issue: Local units of government may set different conditions for similar Michigan manufacturers.

Rationale for Change/Additional Comments: To level the playing field for like Michigan manufacturers in a local unit of government jurisdiction.

Recommendation: Amend MCL 436.1201(3) to read “A rule, regulation, **ordinance** or order made by the commission **or local unit of government** shall not unreasonably discriminate against **similar** Michigan manufacturers of alcoholic liquor.”

Yeas – Borrello, Brown, Burzych, Coe, Dennis, Deloney, Gobler, Greff, Harkins, Keenoy, Lambrecht, O’Niel, Smith, Telliga, Zimmer (15)

Nays – Arabo, Fitzpatrick, McGovern (3)

Absent/Not Voting – Alexander, Coleman, Moody (3)

FINAL

Recommendation #48

Subject: Service at Event held under a Special License

Recommendation: Authorize distillery, winery and brewery representatives (in and out of state) and wholesale distributor reps to pour and serve sample wines and beers at local festivals and fundraisers.

Unanimous

Recommendation #49

Subject: MCL 436.1707, MCL 436.1901, R 436.1011 and R 436.1417 – “Knowingly Allow” versus “Allow”

Background/Issue: Many of the regulations require licensees to be responsible for acts of their customers that the licensee and their staff may be unaware of happening.

There are regulations that require the licensee to be totally aware of all actions of their customers that the licensee and their staff may not be aware of because the statute or the rule states that the licensee is allowing the act to happen.

436.1707 Selling, serving, or furnishing alcohol; prohibitions.

Sec. 707. A vendor shall not sell, serve, or furnish any alcoholic liquor to any person in an intoxicated condition.

(2) A licensee shall not allow a person who is in an intoxicated condition to consume alcoholic liquor on the licensed premises.

(3) A licensee, or the clerk, servant, agent, or employee of a licensee, shall not be in an intoxicated condition on the licensed premises.

(4) A licensee shall not allow an intoxicated person to frequent or loiter on the licensed premises except where the intoxicated person has been refused service of further alcoholic liquor and continues to remain on the premises for the purpose of eating food, seeking medical attention, arranging transportation that does not involve driving himself or herself, or any other circumstances where requiring the person to vacate the premises immediately would be considered dangerous to that person or to the public.

(5) A licensee shall not allow a minor to consume alcoholic liquor or to possess alcoholic liquor for personal consumption on the licensed premises.

(6) A licensee shall not allow any person less than 18 years of age to sell or serve alcoholic liquor.

(7) A licensee shall not allow any person less than 18 years of age to work or entertain on a paid or voluntary basis on the licensed premises unless the person is employed in compliance with the youth employment standards act, 1978 PA 90, MCL 409.101 to 409.124. This subsection does not apply to an entertainer under the direct supervision and control of his or her parent or legal guardian.

436.1901 Compliance required; prohibited acts.

Sec. 901. (1) A person, directly or indirectly, himself or herself or by his or her clerk, agent, or employee, shall not manufacture, manufacture for sale, sell, offer or keep for

sale, barter, furnish, import, import for sale, transport for hire, transport, or possess any alcoholic liquor unless the person complies with this act.

(2) A licensee shall not allow unlawful gambling on the licensed premises and shall not allow on the licensed premises any gaming devices prohibited by law.

(3) A licensee shall not sell, offer or keep for sale, furnish, possess, or allow a customer to consume alcoholic liquor that is not authorized by the license issued to the licensee by the commission.

(4) A person, whether or not a licensee, shall not sell, deliver, or import spirits unless the sale, delivery, or importation is made by the commission, the commission's authorized agent or distributor, an authorized distribution agent certified by order of the commission, a person licensed by the commission, or by prior written order of the commission. A person who violates this subsection is subject to the sanctions and penalties contained in section 909(4) and, in the case of a violation of section 909(4)(a), is subject to forfeiture of proceeds or an instrumentality as provided for in chapter XXVA of the Michigan penal code, 1931 PA 328, MCL 750.159f to 750.159x.

(5) A licensee shall not sell or furnish alcoholic liquor to a person who maintains, operates, or leases premises that are not licensed by the commission and upon which other persons unlawfully engage in the sale or consumption of alcoholic liquor for consideration as prohibited by section 913.

(6) A retail licensee shall not, on his or her licensed premises, sell, offer for sale, accept, furnish, possess, or allow the consumption of alcoholic liquor that has not been purchased by the retail licensee from the commission, the commission's authorized agent or distributor, an authorized distribution agent certified by order of the commission, or a licensee of the commission authorized to sell that alcoholic liquor to a retail licensee. This subsection does not apply to the consumption of alcoholic liquor in the bedrooms or suites of registered guests of licensed hotels or in the bedrooms or suites of bona fide members of licensed clubs.

R 436.1011 Prohibited conduct of licensees, agents, or employees.

(6) A licensee, or the clerk, servant, agent, or employee of the licensee, shall not do any of the following:

(a) Allow, on the licensed premises, the annoying or molesting of customers or employees by other customers or employees.

(b) Knowingly allow the licensed premises to be used by any person for the purposes of accosting or soliciting another person to commit prostitution.

(c) Allow, on the licensed premises, fights, brawls, or the improper use of firearms, knives, or other weapons.

(d) Allow the sale, possession, or consumption on the licensed premises of any controlled substances that are prohibited by 1978 P.A. 368, MCL 333.1101 et seq.

(e) Allow narcotics paraphernalia to be used, stored, exchanged, or sold on the licensed premises.

R 436.1417 Employees serving food or liquor prohibited from eating, drinking, or mingling with customers; licensees, agents, and employees prohibited from soliciting customers; allowing customer to solicit liquor prohibited.

Rule 17. (1) An on-premise licensee shall not allow a person who is engaged in the serving of food or alcoholic liquor to eat, drink, or mingle with the customers.

(2) An on-premise licensee, or the clerk, servant, agent, or employee of an on-premise licensee, shall not solicit a customer for the purchase of alcoholic liquor for himself or herself or for any other person.

(3) An on-premise licensee, or the clerk, servant, agent, or employee of an on-premise licensee, shall not allow a customer to solicit alcoholic liquor for himself or herself or for any other person.

Rationale for Change/Additional Comments: The licensee and staff cannot know what all customers are doing at all times. The licensee needs to be vigilant for patrons that may be breaking the law. When what the customer is doing is not blatantly obvious to the licensee and the staff the licensee should not be held responsible.

Recommendation: Amend the regulations to protect licensees *and servers* except in cases where, considering the totality of the circumstances, it is clear they knew of or should have been aware of the conduct constituting the violation they are charged with. *The lower standard of proof, however, should remain applicable to licensees and servers where the violation involves service of minors.*

***ORR recommends that servers also be included and that violations involving the service of minors be determined based on the existing lower standard of proof.*

Unanimous

Recommendation #50

Subject: R 436.1315 and R 436.1319 - Retail Advertising

Background/Issue: All cooperative advertising is prohibited in Michigan between suppliers, manufacturers and retailers. This includes wholesalers providing signs to retailers that contain alcohol advertising and information specific to the retailer.

Retail licensees can be cited for having alcohol advertisement on their premises that has anything specific to their establishment on it that was provided by a wholesaler or supplier. An example of this illegal advertising would be an outside banner that advertises a brand of beer and an event happening at that specific retail establishment or a plastic table tent that has a beer logo on it that also has the retailer's snack menu.

R 436.1315 Retail advertising space

Rule 15. 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.

R 436.1319 Cooperative advertising

Rule 19. (1) There shall not be cooperative advertising:

(a) Between a manufacturer, an outstate seller of beer, an outstate seller of wine, and a retail licensee.

(b) Between a wholesaler and a retail licensee.

(c) Between a manufacturer, an outstate seller of beer, an outstate seller of wine, and a wholesale licensee.

(2) A manufacturer, an outstate seller of beer, or an outstate seller of wine may:

(a) Pay the cost of painting the trucks of a wholesale licensee.

(b) Supply brand logo decals and advertising mats to a wholesale licensee without cost.

(c) Use the name of his wholesaler in his advertising.

(3) The name of a retail licensee shall not appear in the advertising of a manufacturer, an outstate seller of beer, an outstate seller of wine, or a wholesaler.

Rationale for Change/Additional Comments: Most wholesalers have the means to provide these items economically because they have the equipment for their own use as well. The MLCC has allowed them to provide generic banners that they customize to specific statewide events. Licensees should be able to utilize their inside signs or table tents to advertise the alcohol products they sell as well as other items available.

Recommendation: The MLCC should amend the rules to allow suppliers and wholesalers to provide alcohol advertising material with specific reference to the retailer. The ARC proposed that the amended rule read as follows:

R 436.1315 Retail advertising space

Rule 15. **A manufacturer, an outstate seller of beer, an outstate seller of wine, or a wholesaler may furnish to a retail licensee, and a retail licensee may receive, advertising which has the name of the retail licensee on the advertising.**

R 436.1319 Cooperative advertising

Rule 19. (1) There shall not be cooperative advertising:

(a) Between a manufacturer, an outstate seller of beer, an outstate seller of wine, and a retail licensee.

(b) Between a wholesaler and a retail licensee.

(c) Between a manufacturer, an outstate seller of beer, an outstate seller of wine, and a wholesale licensee.

(2) A manufacturer, an outstate seller of beer, or an outstate seller of wine may:

(a) Pay the cost of painting the trucks of a wholesale licensee.

(b) Supply brand logo decals and advertising mats to a wholesale licensee without cost.

(c) Use the name of his wholesaler in his advertising.

(3) **A manufacturer, an outstate seller of beer, an outstate seller of wine, or a wholesaler shall not in any manner furnish to a retail licensee, and a retail licensee shall not accept money or other valuable consideration for advertising space in or upon the premises of the retail licensee.**

Yeas – Arabo, Borrello, Brown, Burzych, Coe, Dennis, Deloney, Fitzpatrick, Gobler, Greff, Lambrecht, McGovern, Moody, O’Niel, Smith, Zimmer (16)

Nays – None

Absent/Not Voting – Alexander, Coleman, Harkins, Keenoy, Telliga (5)

Recommendation #51

Subject: R 436.1403 and R 436.1503 - Hours and days of operation

Background/Issue: Recent statute changes have led to inconsistencies in Rules and there is no regulation regarding the change from Daylight Time to Standard Time.

Statute changes regarding the hours and days of sale of alcoholic beverages have made some of the rules inconsistent with the law changes. The rules do not currently provide for an orderly closure when the time changes from Standard Time to Daylight Time.

R 436.1403 Hours and days of operation.

Rule 3. (1) Except as provided in subrule (7) of this rule, an on-premise licensee shall not sell, give away, or furnish alcoholic liquor between the hours of 2 a.m. and 7 a.m. on any day nor between the hours of 2 a.m. and 12 noon on Sunday and shall not sell, give away, or furnish spirits between the hours of 2 a.m. and 12 midnight on Sunday, unless issued a Sunday sales permit by the commission which allows the licensee to sell spirits on Sunday between the hours of 12 noon and 12 midnight.

(2) Between the hours of 2:30 a.m. and 12 noon on any Sunday, or from 2:30 a.m. to 7 a.m. on any other day, an on-premise licensee shall not allow the licensed premises to be occupied by anyone except the on-premise licensee, the bona fide employees of the on-premise licensee who are working, or bona fide contractors and employees thereof who are working, except as provided in subrule (8) of this rule or unless such on-premise licensee first obtains a permit approved by the liquor control commission and by the chief of police, sheriff, or other chief law enforcing officer in the community which authorizes the on-premise licensee to remain open for a stated specific purpose for such other hours and during such periods of time as the commission may determine. The permit shall be displayed adjacent to the license. In the case of a class A hotel, a class B hotel, and a club licensee with bedrooms or suites for bona fide club members and their guests, this subrule shall apply only to the following portions of the licensed premises:

(a) Rooms open to the general public or club members and their guests for eating, drinking, or amusement where alcoholic liquor is served.

(b) Rooms used for wedding parties and similar activities where alcoholic liquor is served.

(3) An on-premise licensee shall not allow the consumption of any alcoholic liquor on the licensed premises between the hours of 2:30 a.m. and 7 a.m. on any day, except as provided in subrule (7) of this rule.

(4) An on-premise licensee shall not allow the consumption of any alcoholic liquor on the licensed premises between the hours of 9:30 p.m. on December 2 to 7 a.m. on December 2. This prohibition shall extend to 12 noon on December 26 if December 26 falls on Sunday.

(5) An on-premise licensee shall not allow the consumption of spirits on the licensed premises between the hours of 2:30 a.m. and 12 midnight on Sunday. This subrule does not apply to the consumption of spirits on the licensed premises between the hours of 12 noon and 12 midnight on Sunday if the on-premise licensee possesses a Sunday sales permit issued by the commission.

(6) An on-premise licensee shall not allow the consumption of any alcoholic liquor on the licensed premises between the hours of 2:30 a.m. and 12 noon on Sunday.

(7) An on-premise licensee shall not sell alcoholic liquor on January 1 after 4 a.m. or before the legal hour of sale as provided in subrule (1) of this rule, and alcoholic liquor shall not be consumed on the licensed premises on January 1 after 4:30 a.m. or before the legal hour for consumption as provided in subrules (3), (5), and (6) of this rule.

(8) From 4:30 a.m. on January 1 to the legal hour of sale as provided in subrule (1) of this rule, an on-premise licensee shall not allow the licensed premises to be occupied by anyone other than the on-premise licensee, the bona fide employees of the licensee who are working, or bona fide contractors and employees thereof who are working, unless the on-premise licensee has been granted a specific purpose permit authorized by subrule (2) of this rule. In the case of a class A hotel, a class B hotel, and a club licensee with bedrooms or suites for bona fide club members and their guests, this subrule applies only to the following portions of the licensed premises:

(a) Rooms open to the general public or club members and their guests for eating, drinking, or amusement where alcoholic liquor is served.

(b) Rooms used for wedding parties and similar activities where alcoholic liquor is served.

(9) The provisions of subrules (3), (4), (5), (6), and (7) of this rule do not apply to the consumption of alcoholic liquor in the bedrooms or suites of registered guests of licensed hotels or in the bedrooms or suites of bona fide members of licensed clubs.

R 436.1503 Hours and days of operation.

Rule 3. An off-premise licensee shall not sell, give away, deliver, or furnish alcoholic liquor between the hours of 2 a.m. and 7 a.m. on any day or between the hours of 2 a.m. and 12 noon on Sunday and shall not sell, give away, deliver, or furnish spirits between the hours of 2 a.m. and 12 midnight on Sunday, unless issued a Sunday sales permit by the commission which allows the licensee to sell spirits on Sunday between the hours of 12 noon and 12 midnight.

Rationale for Change/Additional Comments: Disparity between Statutes and Rules. Provide direction for licensees regarding time changes.

Recommendation: Amend the rules to match the statutes and address time changes.

R 436.1403 Hours and days of operation.

Rule 3. (1) Except as provided in subrule (7) of this rule, an on-premise licensee shall not sell, give away, or furnish alcoholic liquor between the hours of 2 a.m. and 7 a.m. on any day nor between the hours of 2 a.m. and 12 noon on Sunday and shall not sell, give away, or furnish spirits between the hours of 2 a.m. and 12 midnight on Sunday, unless issued a Sunday sales permit by the commission which allows the licensee to sell spirits on Sunday between the hours of 12 noon and 12 midnight or **a Sunday morning permit pursuant to 436.2114 which allows the licensee to sell alcohol between 7:00 am and noon on Sunday.**

(2) **Between the hours of 2:30 a.m. and 12 noon on any Sunday unless issued a Sunday morning permit pursuant to 436.2114 which allows the licensee to sell alcohol between 7:00 am and noon on Sunday,** or from 2:30 a.m. to 7 a.m. on any other day, an on-premise licensee shall not allow the licensed premises to be occupied by anyone except the on-premise licensee, the bona fide employees of the on-premise licensee who are working, or bona fide contractors and employees thereof who are working, except as provided in subrule (8) of this rule or unless such on-premise licensee first obtains a permit approved by the liquor control commission and by the chief of police, sheriff, or other chief law enforcing officer in the community which authorizes the on-premise licensee to remain open for a stated specific purpose for such other hours and during such periods of time as the commission may determine. The permit shall be displayed adjacent to the license. In the case of a class A hotel, a class B hotel, and a club licensee with bedrooms or suites for bona fide club members and their guests, this subrule shall apply only to the following portions of the licensed premises:

(a) Rooms open to the general public or club members and their guests for eating, drinking, or amusement where alcoholic liquor is served.

(b) Rooms used for wedding parties and similar activities where alcoholic liquor is served.

(3) An on-premise licensee shall not allow the consumption of any alcoholic liquor on the licensed premises between the hours of 2:30 a.m. and 7 a.m. on any day, except as provided in subrule (7) of this rule.

(4) An on-premise licensee shall not allow the consumption of any alcoholic liquor on the licensed premises between the hours of 12:30 a.m. on December 25 to noon on December 25.

(5) An on-premise licensee shall not allow the consumption of spirits on the licensed premises between the hours of 2:30 a.m. and 12 midnight on Sunday. This subrule does not apply to the consumption of spirits on the licensed premises between the hours of 12 noon and 12 midnight on Sunday if the on-premise licensee possesses a Sunday sales permit issued by the commission **or the consumption of spirits between 7:00 a.m. and noon if the on-premises licensee possesses a Sunday morning permit pursuant to 436.2114 which allows the licensee to sell alcohol between 7:00 am and noon on Sunday.**

(6) An on-premise licensee shall not allow the consumption of any alcoholic liquor on the licensed premises between the hours of 2:30 a.m. and 12 noon on Sunday unless the on-premises licensee possesses a Sunday morning permit pursuant to 436.2114 which allows the licensee to sell alcohol between 7:00 am and noon on Sunday.

(7) An on-premise licensee shall not sell alcoholic liquor on January 1 after 4 a.m. or before the legal hour of sale as provided in subrule (1) of this rule, and alcoholic liquor shall not be consumed on the licensed premises on January 1 after 4:30 a.m. or before the legal hour for consumption as provided in subrules (3), (5), and (6) of this rule.

(8) From 4:30 a.m. on January 1 to the legal hour of sale as provided in subrule (1) of this rule, an on-premise licensee shall not allow the licensed premises to be occupied by anyone other than the on-premise licensee, the bona fide employees of the licensee who are working, or bona fide contractors and employees thereof who are working, unless the on-premise licensee has been granted a specific purpose permit authorized by subrule (2) of this rule. In the case of a class A hotel, a class B hotel, and a club licensee with bedrooms or suites for bona fide club members and their guests, this subrule applies only to the following portions of the licensed premises:

(a) Rooms open to the general public or club members and their guests for eating, drinking, or amusement where alcoholic liquor is served.

(b) Rooms used for wedding parties and similar activities where alcoholic liquor is served.

(9) The provisions of subrules (3), (4), (5), (6), and (7) of this rule do not apply to the consumption of alcoholic liquor in the bedrooms or suites of registered guests of licensed hotels or in the bedrooms or suites of bona fide members of licensed clubs.

(10) On the date that the time changes to Daylight Time from Standard Time on-premises licensees shall not allow the licensed premises to be occupied by anyone other than the on-premises licensee, the bona fide employees of the licensee who are working, or bona fide contractors and employees thereof who are working, unless the on-premises licensee has been granted a specific purpose permit authorized by

FINAL

subrule (2) of this rule from 3:30 a.m. Daylight Time to the legal hour of sale as provided in subrule (1) of this rule.

Yeas – Arabo, Borrello, Brown, Burzych, Coe, Dennis, Deloney, Fitzpatrick, Greff, Lambrecht, McGovern, Moody, O’Niel, Smith, Zimmer (15)

Nays – None

Absent/Not Voting – Alexander, Coleman, Gobler, Harkins, Keenoy, Telliga (6)

Recommendation #52

Subject: MCL 436.2013 - Sale or purchase of alcoholic liquor for cash; exceptions

Background/Issue: The law regarding credit sales discriminates against some retailers who are not allowed to extend credit.

Credit sales are only allowed in certain instances and do not allow the retail licensee to make the decision whether to extend credit to customers. The statute is vague and uses undefined types of accounts. It discriminates against most licensees.

436.2013 Sale or purchase of alcoholic liquor for cash; exceptions.

Sec. 1013. A sale or purchase of alcoholic liquor made in a state liquor store and by all types of licensees shall be for cash only, except for the following:

- (a) A customer's charge account with a specially designated merchant who is not a holder of a license authorizing sale of alcoholic liquor for consumption on the premises.
- (b) A sale to a bona fide registered guest of a class B hotel or class A hotel, if the extension of credit does not exceed 30 days.
- (c) A sale to an industrial account if the extension of credit does not exceed 30 days.
- (d) A sale to a person holding an authorized credit card from a credit card agency.
- (e) A sale to a professional account, or an industrial account of class C licensee or a tavern, whose major business is food, if the extension of credit does not exceed 30 days.
- (f) A sale by a private club to a bona fide member.

Rationale for Change/Additional Comments: Retail licensees must be able to offer as many services as possible to compete in today's business environment. Retail licensees should be able to make the decision as to whom they will extend credit.

Recommendation: Amend the statute to allow the retailer the choice as whether credit is extended to customers.

436.2013 Sale or purchase of alcoholic liquor for cash; exceptions.

Sec. 1013. A sale or purchase of alcoholic liquor by all types of licensees shall be for cash only, except the following:

- (a) **A customer's charge account with a retail licensee.**
- (b) A sale to a person holding an authorized credit card from a credit card agency.
- (c) A sale by a private club to a bona fide member.

<p><i>Yeas – Arabo, Borrello, Brown, Burzych, Coe, Dennis, Deloney, Gobler, Greff, Lambrecht, McGovern, Moody, O’Niel, Smith, Zimmer (15)</i></p>

FINAL

Nays – Fitzpatrick (1)

Absent/Not Voting – Alexander, Coleman, Harkins, Keenoy, Telliga (5)

Recommendation #53

Subject: R 436.1321- Contests and advertising articles (Secondary Use)

Background/Issue: The Rules provide the MLCC the ability to approve logoed items for use in an on-premises licensed establishment.

The Commission historically does not give approval for the use of advertising on items of secondary use or the use of any logoed items in an on-premises establishment. These items should be available for use by on-premises licensees.

R 436.1321 Contests and advertising articles.

Rule 21. (1) There shall not be advertising of alcoholic liquor connected with offering a prize or award on the completion of a contest, except upon prior written approval of the commission.

(2) Spirits shall not be advertised on the premises of a retail licensee, except as provided in these rules or upon prior written approval of the commission.

(3) There shall not be advertising of alcoholic liquor on anything which has any value, use, or purpose other than the actual advertising value, except upon written order of the commission.

(4) Advertising material which does not contain the name of a retail licensee and does not have a secondary value, but explains the production, sale, or consumption of alcoholic liquor may be published and distributed in this state.

(5) Alcoholic liquor recipe literature which does not contain the name of a retail licensee may be published and distributed in this state.

(6) All gambling devices, including punch boards and games of any description used for advertising purposes, are prohibited.

(7) A manufacturer, an outstate seller of beer, an outstate seller of wine, or a wholesaler may sell novelty items bearing brand logo type, upon written order of the commission. These novelty items shall not be sold below their cost by the manufacturer, outstate seller of beer, outstate seller of wine, or wholesaler.

(8) A licensee licensed to sell alcoholic liquor for consumption on the premises shall not sell, give, or furnish to anyone, novelty items bearing brand logo type on the licensed premises, nor shall the licensee use novelty items on the licensed premises except upon written order of the commission.

Rationale for Change/Additional Comments: The majority of other states allow items like logoed glassware, napkins, coasters and wearing apparel in a licensed establishment. The Rule already allows this practice in Michigan with the approval of the Commission.

Recommendation: The MLCC should remove all prohibitions on Secondary Use items that are provided by suppliers.

Yeas – Borrello, Brown, Burzych, Coe, Deloney, Goble, Greff, Harkins, Lambrecht, McGovern, Smith, Zimmer (12)

Nays – Arabo, Dennis, Fitzpatrick, Moody, O’Niel, Telliga (6)

Absent/Not Voting – Alexander, Coleman, Keenoy (3)

Recommendation #54

Subject: MCL 436.120(10) -- Amend PA 440 to Increase the Monthly Cap of 9 Liters that On-Premise Licensees May Buy from Off-Premise Licensees

Background/Issue: PA 440 of 1997 made several significant changes to Michigan’s liquor distribution system. Specifically, three private companies, referred to as ADAs (Authorized Distribution Agents), replaced state employees in performing some activities of the distribution tier in the three-tiered system. (As a practical matter, Michigan has only two ADAs, because one ADA is an extremely small distributor of specialty liquors.) PA 440 included several new mandates, requirements, and prohibitions regarding delivery, all of which impact the delivery costs. ADAs are paid a per-case fee, the amount of which is set by the MLCC within an established range.

Although PA 440 envisioned regular increases to cover increased delivery costs, the per-case fee has not been increased in almost six years, bringing the system’s sustainability into question.

In the absence of regular fee increases, a number of the service requirements and mandates required by PA 440 could be modified to help reduce costs and improve the long-term viability of the distribution tier.

Rationale for Change/Additional Comments: The service mandates required by PA 440 have created a costly distribution system. Michigan is unique in that no other state has such a large product offering to the consumer, has no limits on split cases, does not allow for a split-case fee, or requires delivery to as many outlets—all of which impact the distribution costs.

PA 440 clearly envisioned, however, that the per-case ADA fee would be adjusted on a regular basis to keep pace with these and the other costs of warehousing and delivery. This is precisely what occurred in the first nine years of the revised delivery system, with average annual increases of 2.8 percent from 1997 to 2006. No increases have occurred, however, in the past five years.

Other developments during the past several years have increased distribution costs beyond normal inflation. The number of products (called “SKUs”) handled by the system has tripled since the current distribution system was established in 1997, and the almost 6,000 SKUs being distributed today in Michigan is two to three times the number of products available to consumers in other states. The percentage of the volume ordered in split cases has also increased dramatically—National Wine and Spirits, the largest ADA in Michigan, repacked 32 million bottles into split cases in calendar year 2010, which is close to 60 percent of its volume.

In the absence of regular increases in the per-case fee, PA 440 could be amended to increase the amount of liquor that on-premise licensees may purchase from off-premise licensees on a monthly basis. Michigan is unique among the 18 “control” states in that it requires—by law—weekly delivery to all licensees (4,268 off-premise and 9,160 on-premise—over 13,000 separate delivery points). Delivery logistics must be capable each week of fulfilling a 1,000-case order for a large supermarket in southeast Michigan and a single split-case order for a bar in Copper Harbor. This requirement, coupled with Michigan’s size and large number of small on-premise licensees, creates costly logistical hurdles for distribution companies.

Michigan has the highest number of delivery points of all the control states. In many control states, it is common practice to limit the number of delivery points by such practices as requiring on-premise licensees—bars and restaurants—to pick up liquor products from off-premise licensees.

PA 440 currently allows on-premise licensees to purchase up to 9 liters of liquor per month from off-premise licensees. Raising that cap would not only provide smaller bars and restaurants additional flexibility for “on demand” purchasing, but it would also result in reduced distribution costs for the entire system.

Recommendation: Amend PA 440 to Increase the amount of liquor that on-premise licensees may buy from off-premise licensees.

Yeas – Arabo, Brown, Burzych, Coleman, Coe, Dennis, Deloney, Fitzpatrick, Greff, Harkins, Keenoy, Lambrecht, McGovern, Smith, Telliga, Zimmer (16)

Nays – None

Absent/Not Voting – Alexander, Borrello, Gobler, Moody, O’Niel (5)

Recommendation #55

Subject: MCL 436.1205(13) -- MLCC Adjust the Per-Case ADA Fee

Background/Issue: PA 440 of 1997 made several significant changes to Michigan’s liquor distribution system. Specifically, three private companies, referred to as ADAs (Authorized Distribution Agents), replaced state employees in performing some activities of the distribution tier in the three-tiered system. (As a practical matter, Michigan has only two ADAs, because one ADA is an extremely small distributor of specialty liquors.) PA 440 included several new mandates, requirements, and prohibitions regarding delivery, all of which impact the delivery costs. ADAs are paid a per-case fee, the amount of which is set by the MLCC within an established range.

Although PA 440 envisioned regular increases to cover increased delivery costs, the per-case fee has not been increased in almost six years, bringing the system’s sustainability into question.

Rationale for Change/Additional Comments: PA 440 clearly envisioned that the per-case ADA fee would be adjusted on a regular basis to keep pace with the costs of warehousing and delivery. This is precisely what occurred in the first nine years of the revised delivery system, with average annual increases of 2.8 percent from 1997 to 2006. No increases have occurred, however, in the past five years.

Other developments during the past several years have increased distribution costs beyond normal inflation. The number of products (called “SKUs”) handled by the system has tripled since the current distribution system was established in 1997, and the almost 6,000 SKUs being distributed today in Michigan is two to three times the number of products available to consumers in other states. Although this provides consumer benefits, it also has cost implications, particularly when combined with the delivery requirements established by PA 440, such as no split-case fees, no delivery charges, and weekly deliveries.

In addition, just less than 60 percent of volume is now ordered in split cases. This is not only dramatically higher than other control states, but it is also much higher than the early days of Michigan’s revised distribution and financing system. Prior to the 1997 changes, the number of split cases per order was actually limited by the state.

Inflationary costs, the increased costs resulting from the introduction of new products, and the increased volume of split cases clearly justify an immediate increase in the per-case fee. The MLCC has the authority to increase the ADA per-case fee by \$0.53 immediately to help keep pace with inflationary costs that have not been addressed in almost six years.

Recommendation: The MLCC should use its existing authority to increase the per-case ADA Fee.

FINAL

Yeas – Arabo, Coleman, Coe, Dennis, Deloney, Fitzpatrick, Greff, Harkins, Keenoy, Lambrecht, McGovern, O’Niel, Smith, Telliga, Zimmer (15)

Nays – Burzych (1)

Absent/Not Voting – Alexander, Borrello, Brown, Gobler, Moody (5)

Recommendation #56

Subject: MCL 436.1205(13) -- Have the State Administrative Board Utilize Its Authority to Increase the Cap on the Per-Case ADA Delivery Fee

Background/Issue: PA 440 of 1997 made several significant changes to Michigan’s liquor distribution system. Specifically, three private companies, referred to as ADAs (Authorized Distribution Agents), replaced state employees in performing some activities of the distribution tier in the three-tiered system. (As a practical matter, Michigan has only two ADAs, because one ADA is an extremely small distributor of specialty liquors.) PA 440 included several new mandates and prohibitions regarding delivery, all of which impact the delivery costs. ADAs are paid a per-case fee, the amount of which is set by the MLCC within an established range.

Although PA 440 envisioned regular increases to cover increased delivery costs, the per-case fee has not been increased in almost six years, bringing the system’s sustainability into question.

PA 440 established an initial range of between \$4.50 and \$7.50 for the per-case ADA fee, and allowed the MLCC to set the fee within that range. Since the current per-case fee is \$6.97, the MLCC has the authority to increase the fee another \$0.53. The statute also gave the State Administrative Board the authority to increase the \$7.50 ceiling “...each January to reflect reasonable increases in the authorized distribution agent’s cost of warehousing and delivery.”

The State Administrative Board is a committee composed of the Governor, Lieutenant Governor, Secretary of State, Attorney General, State Treasurer, Superintendent of Public Instruction, and the Director of the Department of Transportation—or their designees. It meets twice a month and has general supervisory control over the administrative activities of all state departments and agencies, including, but not limited to, the approval of contracts and leases, oversight of the state capitol outlay process, and the settlement of claims against the state under \$1,000.

Rationale for Change/Additional Comments: PA 440 of 1997 clearly envisioned that the per-case ADA fee would be adjusted on a regular basis to keep pace with the costs of warehousing and delivery. This is precisely what occurred in the first nine years of the revised delivery system, with average annual increases of 2.8 percent from 1997 to 2006. No increases have occurred, however, in the past five years. Although the MLCC has the authority to increase the per-case fee by another \$0.53 to the maximum allowable \$7.50, this alone does not cover the inflationary costs of the past five years. In fact, if the 2.8 percent average annual increase had been maintained, the state’s per-case ADA fee would be \$8.00 today, well beyond the current \$7.50 cap.

Other developments during the past several years have increased distribution costs beyond normal inflation. The number of products (called “SKUs”) handled by the system has tripled since the current

FINAL

distribution system was established in 1997, and the almost 6,000 SKUs being distributed today in Michigan is two to three times the number of products available to consumers in other states. Although this provides consumer benefits, it also has cost implications, particularly when combined with the delivery requirements established by PA 440, such as no split-case fees, no delivery charges, and weekly deliveries.

In addition, just less than 60 percent of volume is now ordered in split cases. This is not only dramatically higher than other control states, but it is also much higher than the early days of Michigan's revised distribution and financing system. Prior to the 1997 changes, the number of split cases per order was actually limited by the state.

PA 440 gave the State Administrative Board the authority to review the \$7.50 ceiling every January, and it is time for an increase.

Recommendation: Have the State Administrative Board Utilize Its Authority to Increase the Current Maximum of \$7.50 for the Per-Case ADA Delivery Fee.

Yeas – Arabo, Brown, Coe, Dennis, Deloney, Fitzpatrick, Greff, Harkins, Keenoy, Lambrecht, McGovern, Smith, Telliga, Zimmer (14)

Nays – Burzych, Coleman (2)

Absent/Not Voting – Alexander, Borrello, Gobler, Moody, O'Niel (5)

Recommendation #57

Subject: MLCC to Limit the Number of Products Available

Background/Issue: PA 440 of 1997 made several significant changes to Michigan’s liquor distribution system. Specifically, three private companies, referred to as ADAs (Authorized Distribution Agents), replaced state employees in performing some activities of the distribution tier in the three-tiered system. (As a practical matter, Michigan has only two ADAs, because one ADA is an extremely small distributor of specialty liquors.) PA 440 included several new mandates, requirements, and prohibitions regarding delivery, all of which impact the delivery costs. ADAs are paid a per-case fee, the amount of which is set by the MLCC within an established range.

Although PA 440 envisioned regular increases to cover increased delivery costs, the per-case fee has not been increased in almost six years, bringing the system’s sustainability into question.

In the absence of regular fee increases, a number of the current service requirements and mandates could be modified to help reduce costs and improve the long-term viability of the distribution tier.

One factor contributing to rising distribution costs in Michigan is the dramatic increase in the number of products (called “SKUs”) available. When the current distribution system was established in 1997, ADAs were distributing fewer than 2,000 different SKUs in Michigan. Today, 5,480 SKUs are being distributed—and 600 new items were added in 2007 alone. This is two to three times the number of SKUs available in other states. Although this provides consumer benefits, it also has cost implications, particularly when combined with the delivery requirements established in PA 440, such as no split-case fees, no delivery charges, and weekly deliveries.

The MLCC establishes the threshold that determines which products may be ordered by licensees in Michigan. The current threshold is low—three standard-sized cases must be sold in a six-month period and six standard-sized cases must be sold in one year for “value added” packages. Increasing this threshold would reduce handling costs and result in reduced distribution costs in Michigan.

For example, if the threshold were doubled so that six standard-sized cases must be sold in a six-month period, 911 products would no longer be available for distribution—representing a reduction of 17 percent from the current 5,480 products currently available for distribution. Given the fact that the vast majority of these products appear in split cases for delivery, this would represent a significant reduction in distribution costs, while at the same time continuing to provide Michigan consumers more products than any other control state in the nation.

Rationale for Change/Additional Comments: The service mandates required by PA 440—weekly delivery to all retail licensees, no split-case fee, and no delivery charges—has created a costly distribution system. PA 440 clearly envisioned, however, that the per-case ADA fee would be adjusted on a regular basis to keep pace with these and the other costs of warehousing and delivery. This is precisely what occurred in the first nine years of the revised delivery system, with average annual increases of 2.8 percent from 1997 to 2006. No increases have occurred, however, in the past five years.

Other developments during the past several years have increased distribution costs beyond normal inflation. The number of products handled by the system has tripled since the current distribution system was established in 1997, and the percentage of the volume ordered in split cases has also increased dramatically—National Wine and Spirits, the largest ADA in Michigan, repacked 32 million bottles into split cases in calendar year 2010, which is close to 60 percent of its volume.

In the absence of regular increases in the per-case fee or modifications of the service requirements of PA 440, the MLCC could reduce distribution costs by increasing the threshold that determines which products may be ordered by licensees in Michigan.

Recommendation: The MLCC should consider limiting the number of products available.

<p><i>Yeas</i> – Arabo, Borrello, Burzych, Coleman, Coe, Dennis, Deloney, Fitzpatrick, Greff, Harkins, Keenoy, Lambrecht, McGovern, O’Niel, Smith, Telliga, Zimmer (17)</p> <p><i>Nays</i> – None</p> <p><i>Absent/Not Voting</i> – Alexander, Brown, Gobler, Moody (4)</p>

Recommendation #58

Subject: ADA - Process and Standards for Regular Adjustments to the Per-Case ADA Delivery Fee

Background/Issue: PA 440 of 1997 made several significant changes to Michigan’s liquor distribution system. Specifically, three private companies, referred to as ADAs (Authorized Distribution Agents), replaced state employees in performing some activities of the distribution tier in the three-tiered system. (As a practical matter, Michigan has only two ADAs, because one ADA is an extremely small distributor of specialty liquors.) PA 440 included several new mandates and prohibitions regarding delivery, all of which impact the delivery costs. ADAs are paid a per-case fee, the amount of which is set by the MLCC within an established range. The range, originally established in PA 440, can be adjusted annually by another state entity called the State Administrative Board¹ “...to reflect reasonable increases in the authorized distribution agent’s cost of warehousing and delivery.”

Although PA 440 envisioned regular increases to cover increased warehousing and delivery costs, the per-case fee has not been increased in almost six years, bringing the system’s sustainability into question.

The fundamental flaw in this financing system is the absence of any requirement, process, or standards to review or adjust the ADA fee on a regular basis in order to keep pace with the cost of the service. With no procedures in place to require an assessment whether the current fee is at the proper level, there is no way to hold either the state or the ADAs accountable for the cost of delivering the service.

Rationale for Change/Additional Comments: PA 440 indicates the legislature clearly envisioned that the MLCC would not only establish the original per-case fee upon transition to the new distribution system, but also that regular adjustments based on cost increases would occur. The principle underlying this approach was that administrative agencies—MLCC and the State Administrative Board—were in a better position to evaluate the amount of the per-case fee than the legislature.

The per-case fee paid by the MLCC started at \$5.42 in 1997 and is now \$6.97, with the fee being adjusted nine times in the first nine years of the new distribution system. No increases have occurred in the past five years, although the MLCC has the authority to increase the per-case fee by another \$0.53 to the maximum allowable \$7.50. If the 3.1 percent average annual increase in transportation and warehousing (as calculated by the Bureau of Labor Statistics) had been applied over the past five years,

¹ The State Administrative Board is a committee composed of the Governor, Lieutenant Governor, Secretary of State, Attorney General, State Treasurer, Superintendent of Public Instruction, and the Director of the Department of Transportation—or their designees. It meets twice a month and has general supervisory control over the administrative activities of all state departments and agencies, including, but not limited to, approval of contracts and leases, oversight of the state capital outlay process, and the settlement of claims against the state under \$1,000.

the state's per-case ADA fee would be \$8.12 today, well beyond the \$7.50 cap. The \$7.50 cap has never been adjusted by the state administrative board during the fifteen years of the current delivery system.

Other developments during the past several years have increased distribution costs beyond normal inflation. The number of products handled by the system has tripled since the current distribution system was established in 1997, and the percentage of the volume ordered in split cases has also increased dramatically—National Wine and Spirits, the largest ADA in Michigan, repacked 32 million bottles into split cases in calendar year 2010, which is close to 60 percent of its volume.

All of this has exposed the fundamental flaw in the distribution system and its financing mechanism—no requirement, process, or standard is in place that establishes regular adjustments to the per-case fee. The per-case fee not only needs to be indexed to the inflationary costs of warehousing and delivery, but it also must cover the service mandates in PA 440 and those required by the MLCC.

Administrative agencies—the MLCC and the State Administrative Board—currently have the authority to establish a process that requires an annual review and adjustment to the per-case fee. A number of options exist. ADAs could, for example, be required to submit cost data by a certain date every year, and the MLCC could be required to evaluate this data and make a decision within an established number of days. Such an approach is common throughout state government, whether for rate and fee increases or for permit applications. One negative aspect to this approach is the potential burdensome cost submittal and evaluation process; although one assume something like this occurred during the first nine years of the current distribution system when regular fee increases were granted.

Another approach—much simpler—would be to index the per-case fee to a well-established standard that reflects annual increases in the costs of transportation and warehousing. The United States Bureau of Labor Statistics, for example, calculates and publishes a “transportation and warehousing” index that reflects annual inflation in this sector. The value of this approach is three-fold: (1) it eliminates a burdensome cost submittal and evaluation process, (2) it is based on a well-established national standard that has been developed and used over time, and (3) it helps to reduce any incentive to ADAs to not aggressively pursue cost containment strategies that might exist in an arrangement—like the first option--which might become a simple “cost reimbursement” system.

The attached document shows a variety of price indices developed by the US Bureau of Labor Statistics related to transportation, fuel, transportation services and warehousing. The “transportation and warehousing” index appears near the end of the tables. If the 3.1 percent average annual inflation rate listed for the period 2006-2010 had been applied to the state's ADA fee since the past increase in 2006, the state's per-case fee would be \$8.12 today, rather than the current \$6.97.

FINAL

Once factor to consider in the approaches outlined above -- or any others taken by the MLCC or the State Administrative Board -- is the potential for change or reversal by a future MLCC or administration. This could be successfully addressed, however, by asking the legislature to codify the new process in statute, which is also a common practice in state government.

Recommendation: A statutory process should be developed with an appropriate index to establish the fee cap and a service-linked metric to set the actual fee.

Yeas – Arabo, Borrello, Brown, Coe, Dennis, Deloney, Fitzpatrick, Gobler, Greff, Harkins, McGovern, Moody, O’Niel, Telliga, Zimmer (15)

Nays – Burzych, Lambrecht, Smith (3)

Absent/Not Voting – Alexander, Coleman, Keenoy (3)

Recommendation #59

Subject: Microbrewery License White Paper

Craft beer is a burgeoning segment in the state's economy. Since passage of the microbrewery and brewpub law in 1992 legalizing small breweries to operate and allowing brewpubs to sell directly to consumers, the number of breweries in the state has grown from 3 to 93. Despite ranking 6th for the total number of breweries and 15th for breweries per capita, Michigan-produced beers account for just 2.5% of all beer sold in the state - well below the national average where craft beer is 7.6% of all beer sold. The achievable and realistic goal of the Brewer's Association (and the Michigan Brewers Guild) is to reach 10% of total beer sales.

While the national market share for craft breweries continues to grow, Michigan microbreweries are struggling to increase market share. The vast majority of microbreweries in the state are small start-ups producing unknown brands in a marketplace and distribution network dominated by large multi-national breweries with long-established brand franchises.

Michigan's growing brewing industry provides a heretofore untapped agricultural opportunity as both brewer's barley and hops can be grown and processed in the state. In the last three years the hop crop in the state has grown from 0 to 100 acres with hundreds more acres in the planning. If the Michigan brewing industry were able to reach its goal of 10% market share, there would be a sufficient market for Michigan farmers to begin to supply the hops, barley, and wheat that brewers are now forced to import from neighboring states.

Michigan brewers share many of the characteristics of Michigan wineries. They need to develop initial sales directly to consumers and retailers to develop any consumer identity. Many of their products are specialty items that will never sell in large quantities. In light of those realities the legislature has approved several provisions to help small wineries get their products to market and this committee has recommended that these considerations be expanded both for small wineries and distillers in the state. The country's most successful brewing states have adopted regulatory systems in line with the Brewers Association recommendations for increasing small brewer access to markets. These provisions are also already in place for Michigan wineries and have had no adverse impacts on public health and safety or the three tier system. Bringing parity to small brewers will allow Michigan to achieve its rightful place as a top beer-producing state, will encourage the growth and development of supporting agricultural industries like hop and barley production, and pave the way for an increase in market share to 10% by 2015 putting more Michiganders to work and keeping more consumer dollars in Michigan's economy.

The following simple changes would provide Michigan's small beer manufacturers with the same opportunities currently enjoyed by or being proposed for Michigan wine-makers and distillers:

Include microbreweries in provisions currently applied to small wine-makers

1. Add Micro brewer to the special licensee source of purchase options
R 436.582 Special licensee source of purchase options.
Rule 12. (1) A special licensee may purchase spirits from a licensed specially designated distributor at the uniform sales price set by the commission.
(2) A special licensee may purchase beer and wine from any of the following entities:
(a) A licensed specially designated merchant.
(b) A licensed wholesaler
(c) A licensed Michigan wine maker or small wine maker.
(d) A licensed Michigan Micro brewer
(3) A special licensee may purchase mixed spirit drink from a specially designated distributor or from a licensed wholesaler.

2. Change the definition of "Micro brewer" in 436.1109 to allow the same access to market as is currently provided for in the definition of "Wine maker"
436.1113 Definitions; T to W.
(9) "Wine maker" means any person licensed by the commission to manufacture wine and to sell that wine to a wholesaler, to a consumer by direct shipment, at retail on the licensed winery premises, to sell that wine to a retailer, and as provided for in section 537.

436.1109 Definitions; M to O.
(3) "Micro brewer" means ~~a brewer that produces in total~~ **any person licensed by the commission to manufacture** less than 30,000 barrels of beer per year and ~~that may sell the beer produced to consumers at the licensed brewery premises for consumption on or off the licensed brewery premises.~~ **to sell that beer, to a wholesaler, to a consumer by direct shipment, at retail for consumption on or off the licensed brewery premises, to a retailer, and as provided for in section 537.** In determining the 30,000-barrel threshold, all brands and labels of a brewer, whether brewed in this state or outside this state, shall be combined and all facilities for the production of beer that are owned or controlled by the same person shall be treated as a single facility.

3. Change 436.1537 section 537 as follows to include micro brewers:
436.1537 Classes of vendors permitted to sell alcoholic liquors at retail; sale of wine by wine maker; beer and wine tastings; brandy and spirits tasting.
(d) Direct shippers where **wine and beer** may be sold and shipped directly to the consumer.

(o) **Wine maker and Micro brewer** where **wine and beer** may be sold by direct shipment, at retail on the licensed premises, and as provided for in subsections (2) and (3).

Nos. 1-3

Yeas – Borrello, Brown, Burzych, Coe, Deloney, Gobler, Greff, Lambrecht, McGovern, Moody, Smith, Zimmer (12)

Nays – Arabo, Dennis, Fitzpatrick, O’Niel (4)

Absent/Not Voting – Alexander, Coleman, Keenoy, McGovern, Telliga (5)

Include Micro brewers in proposed changes approved by this committee for wineries and micro-distillers

1. To export beer to licensees and consumers subject to the laws and regulations of the receiving state.

Yeas – Borrello, Brown, Burzych, Coe, Deloney, Gobler, Greff, Harkins, Lambrecht, Moody, Smith (11)

Nays – Arabo, Dennis, Fitzpatrick, McGovern, O’Niel, Zimmer (6)

Absent/Not Voting – Alexander, Coleman, Keenoy, Telliga (4)

2. To sample and sell by the glass, by the bottle, by the case, or by the keg, beer produced in-state for consumption on- or off-premise at the production site and at licensed off-site hospitality rooms.

Yeas – Arabo, Borrello, Brown, Burzych, Coe, Dennis, Deloney, Fitzpatrick, Gobler, Greff, Harkins, Lambrecht, McGovern, Moody, Smith, Zimmer (16)

Nays – O’Niel (1)

Absent/Not Voting – Alexander, Coleman, Keenoy, Telliga (4)

3. To operate hospitality rooms singly or jointly with other Michigan producer licensees.

Yeas – Brown, Burzych, Coe, Dennis, Gobler, Greff, Harkins, Lambrecht, Moody, Smith (10)

Nays – Arabo, Borrello, Deloney, Fitzpatrick, McGovern, O’Niel, Zimmer (7)

Not Voting/Absent – Alexander, Coleman, Keenoy, Telliga (4)

4. To provide samples complimentary or for a fee.

Yeas – Arabo, Borrello, Brown, Burzych, Coe, Dennis, Deloney, Gobler, Greff, Harkins, McGovern, Moody, Smith, Zimmer (14)
Nays – Fitzpatrick, O’Niel (2)
Absent/Not Voting – Alexander, Coleman, Keenoy, Lambrecht, Telliga (5)

5. To sell beer made by that micro brewer in a restaurant for consumption on or off the premises if the restaurant is owned by the micro brewer or operated by another person under an agreement approved by the commission and if on property of the brewery or on property contiguous to the brewery.

Yeas – Borrello, Brown, Burzych, Coe, Dennis, Deloney, Gobler, Greff, Harkins, Lambrecht, McGovern, Moody, Smith, Zimmer (14)
Nays – Arabo, Fitzpatrick, O’Niel (3)
Absent/Not Voting – Alexander, Coleman, Keenoy, Telliga (4)

6. To sell alcoholic beverages not normally sold by the brewery if purchased through an authorized distribution agent of the state.

Yeas – Borrello, Brown, Burzych, Coe, Dennis, Deloney, Fitzpatrick, Gobler, Greff, Harkins, Lambrecht, Moody, Smith (13)
Nays – Arabo, O’Niel, Zimmer (3)
Absent/Not Voting – Alexander, Coleman, Keenoy, McGovern, Telliga (5)

7. To sell beer for off premises consumption at farm markets subject to regulations of the commission.

Yeas – Borrello, Brown, Burzych, Coe, Dennis, Gobler, Greff, McGovern, Moody, Zimmer (10)
Nays – Arabo, Deloney, Fitzpatrick, Lambrecht, O’Niel, Smith (6)
Absent/Not Voting – Alexander, Coleman, Harkins, Keenoy, Telliga (5)

***ORR recommends that Michigan winemakers also be allowed to sell their wine at farm markets.*

FINAL

Recommendation #60

Subject: MLCC system

Background/Issue: If the state upgrades the MLCC system it should allow suppliers access to pertinent information, such as daily sales information by account, shipping by product brand and SKU.

Recommendation: Upgrade the MLCC system to allow suppliers access to pertinent information, such as daily sales information by account. Suggest supplier would have assigned password into the system and their assigned brands.

Unanimous

Recommendation #61

Subject: Allow IRCs to be more than one size for spirits

Background/Issue: Instant redeemable coupons (IRCs) were authorized in Michigan pursuant to a new law enacted in Jan 2011. When the law was proposed IRC's were to have the flexibility to include multiple packages on one coupon. For example: 750ml or larger. Currently the ruling from the commission states that the pack size can only be one size per IRC submission.

Rationale for Change/Additional Comments: We want to up sell the consumer if possible to larger pack sizes, which will enable the state of Michigan to derive more revenue from the sale of distilled spirits.

Recommendation: Allow IRCs to include more than one (1) size and allow them to read "750ml or larger," if desired.

Yeas – Arabo, Brown, Burzych, Coleman, Coe, Dennis, Deloney, Fitzpatrick, Greff, Harkins, Keenoy, Lambrecht, McGovern, Smith, Telliga, Zimmer (16)

Nays – None

Absent/Not Voting – Alexander, Borrello, Gobler, Moody, O’Niel (5)

Recommendation #62

Subject: License Fee Disbursement

Background/Issue: Currently MCL 436.1543 requires all license fees and license renewal fees, except for those associated with retailers, to be credited to the grape and wine industry council, which is housed within the department of Agriculture. These fees are then used to essentially educate Michigan producers on best practices for growing grapes and producing wine and on marketing Michigan wine producers/products (see MCL 436.1303(7)(a)-(e)).

Rationale for Change/Additional Comments: With limited resources available to the MLCC it seems less than ideal to divert license fees to a marketing entity that benefits one small segment of the industry. This is especially true when we know that the commission has limited enforcement personnel and we are recommending significant changes in the licensing process. License fees paid by distributors and producers should be maintained and utilized by the MLCC or local law enforcement, rather than the department of agriculture. These fees should be dedicated to enforcement of liquor regulations and license application investigations.

Recommendation: Levy a \$20 surcharge on all licenses (manufacturer, wholesale and retail) to support an education and enforcement competitive grant program to be administered by the LCC.

Yeas – Arabo, Borrello, Brown, Burzych, Coleman Coe, Dennis, Deloney, Gobler, Surprise, Keenoy, McGovern, Moody, O’Niel, Zimmer (15)

Nays – Smith, Telliga (2)

Absent/Not Voting – Alexander, Fitzpatrick, Harkins, Lambrecht (4)

FINAL

Recommendation #63

Subject: MCL 436 1409 and R 436.1621 -- Beer and Wine Excise Tax Collection

Recommendation: Shift the collection of the excise tax on beer and wine produced outside of Michigan from the supplier to the distributors to increase efficiency.

Yeas – Arabo, Borrello, Brown, Burzych, Coe, Dennis, Deloney, Fitzpatrick, Gobler, Greff, Lambrecht, McGovern, Moody, O’Niel, Smith, Zimmer (16)

Nays – None

Absent/Not Voting – Alexander, Coleman, Harkins, Keenoy, Telliga (5)

Recommendation #64

Subject: MCL 436.1541 -- Motor Vehicle Fuel Pumps

Background/Issue: The Liquor Control Code currently requires retailers who also sell gasoline to maintain a minimum on-premises inventory of merchandise – excluding alcoholic liquor and gasoline – of at least \$250,000 to be eligible to obtain an SDM license. This requirement and others make it difficult for convenience store/gas station operations to become licensed thus limiting their business options.

Recommendation: Reduce the inventory threshold to \$50,000.

Yeas – Alexander, Borrello, Brown, Burzych, Coleman, Coe, Dennis, Deloney, Gobler, Greff, Harkins, Lambrecht, Moody, Smith, Telliga (15)

Nays – Arabo, Fitzpatrick, McGovern, O’Niel, Zimmer (5)

Absent/Not Voting – Keenoy (1)