

## Growlers - Glass or Bottle Re: Liquor Licenses

Article By:

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In July 2013, Michigan Gov. Rick Snyder signed Public Act 101 of 2013, which essentially provides certain existing liquor licenses in Michigan with the right to fill Growlers for sale to the ever increasing number of craft beer patrons, whose apparent thirst for craft and other beer products knows no bound.

In an effort to provide those restaurant owners or operators, who also possess an off premises license, with the same rights as brew pubs, brewers or micro brewers, Michigan law now gives "eligible merchants," meaning those licensees with both an SDM and either a Class C, Tavern, Class A Hotel, Class B Hotel, Club, or G-1 or G-2 license, to fill and sell Growlers of beer solely for off premises consumption. The law is significant, as it permits patrons the opportunity to sample types of beer off the premises that they may otherwise not be able to sample, other than in draught style at the restaurant.

The State of Michigan should be applauded for providing beer lovers more opportunity to taste the finest brews that Michigan manufactures and brewers can produce by legalizing the sale of beer in Growlers. Before restaurant owners start to line up these new containers on the bar for off site consumption, one issue requires some clarification: So, what exactly is a Growler – is it a glass or is it a bottle? More importantly, why does it matter? And why is this attorney-blogger so bent on ruining my buzz with these questions?

Well, under applicable state and federal regulations, a "bottle" requires the supplier to comply with labeling requirements that are not applicable to beer glasses. If a Growler is a sealed "bottle", federal warning label requirements are imposed. These requirements would require the merchant to comply with The Alcoholic Beverage Labeling Act (ABLA) of 1998, which requires certain governmental warnings, and regulates the type and style of the lettering of the label. Anyone with a bottle or can of beer in the refrigerator can quickly review the print to examine, first hand, the extent of these requirements. The IRS also has the ability to control the point of taxation, depending on whether the Growler is a bottle or a glass. In general, if a brewer fills a "bottle" on the premises, it is taxed on the stated net contents upon removal for consumption or sale. Rather if the Growler is treated as a "glass" on the premises, the brewer or seller must fill it from a tank whose contents have previously been subjected to tax.

Whether a Growler is a bottle or a glass depends on certain factors identified by the Alcohol and Tobacco Tax and Trade Bureau. If a Growler is filled by a brewer in advance of the sale at the

restaurant, it is a "bottle," regardless of the material used to create the container or the intent of the seller. If, however, the same container is filled, sealed and made available to the patron only after he or she selects the beer for purchase, the Growler is a "glass." Michigan law also provides additional guidance, as the state defines a Growler as any clean, refillable, sealed container that is intended exclusively for the sale of beer for offsite consumption, with a liquor capacity of one gallon or less. Like its federal counterpart, Michigan law will consider a Growler as a glass if it is filled by the merchant after the sale is consummated.

The impact of the treatment of a Growler is sobering. Therefore, restaurant or pub operators should think twice before pre-filling Growlers for anticipated sale, as the results could be substantial and could ruin all the benefits anticipated with Growler sales.

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National Law Review, Volume III, Number 254

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