

SUBSTITUTE FOR
SENATE BILL NO. 650

A bill to amend 1998 PA 58, entitled
"Michigan liquor control code of 1998,"
by amending section 203 (MCL 436.1203), as amended by 2008 PA 474.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 203. (1) Except as provided in this section and section
2 301, a ~~sale, delivery, or importation of~~ **PERSON SHALL NOT SELL,**
3 **DELIVER, OR IMPORT** alcoholic liquor, including alcoholic liquor for
4 personal use, ~~shall not be made~~ in this state unless the sale,
5 delivery, or importation is made by the commission, the
6 commission's authorized agent or distributor, an authorized
7 distribution agent approved by order of the commission, a person
8 licensed by the commission, or by prior written order of the
9 commission.
10 (2) Notwithstanding R 436.1011(7)(b) and R 436.1527 of the

Michigan administrative code and except as provided in subsection (11), a retailer shall not deliver alcoholic liquor to a ~~Michigan~~ consumer **IN THIS STATE** at the home or business of the consumer or at any location away from the licensed premises of the retailer. The purpose of this subsection is to exercise the state of Michigan's authority under section 2 of amendment XXI of the constitution of the United States, to maintain the inherent police powers to regulate the transportation and delivery of alcoholic liquor, and to promote a transparent system for the transportation and delivery of alcoholic liquor. The regulation described in this subsection is considered necessary for both of the following reasons:

(a) To promote the public health, safety, and welfare.

(b) To maintain strong, stable, and effective regulation by having beer and wine sold by retailers to ~~Michigan~~ consumers **IN THIS STATE** by passing through the 3-tier distribution system established under this act.

(3) For purposes of subsection (1), ~~the sale, delivery, or importation of~~ **A DIRECT SHIPPER MAY SELL, DELIVER, OR IMPORT** wine, to consumers in this state ~~, by a person who both produces and bottles the wine or wine that is manufactured by a wine maker for another wine maker and that is transacted or caused to be transacted by means of any mail order, internet, telephone, computer, device, or other electronic means, or sold~~ **SELL** directly to a consumer on the winery premises. ~~, shall only be done by a direct shipper. If a retail sale, delivery, or importation of wine occurs~~ **A DIRECT SHIPPER THAT SELLS, DELIVERS, OR IMPORTS WINE** to a

1 consumer ~~by any means described in~~ **UNDER** this subsection, ~~the~~
2 ~~direct shipper must~~ **SHALL** comply with all of the following:

3 (a) Hold a direct shipper license.

4 (b) Pay any applicable taxes to the commission and pay any
5 applicable taxes to the department of treasury as directed by the
6 department of treasury. Upon the request of the department of
7 treasury, a direct shipper shall furnish an affidavit to verify
8 payment.

9 (c) Comply with all prohibitions of the laws of this state,
10 including, but not limited to, sales to minors.

11 (d) Verify the age of the individual placing the order by
12 obtaining from him or her a copy of a photo identification issued
13 by this state, another state, or the federal government or by
14 utilizing an identification verification service. The person
15 receiving and accepting the order on behalf of the direct shipper
16 shall record the name, address, date of birth, and telephone number
17 of the ~~person~~ **INDIVIDUAL** placing the order on the order form or
18 other verifiable record of a type and generated in a manner
19 approved by the commission and provide a duplicate to the
20 commission.

21 (e) Upon request of the commission, make available to the
22 commission any document used to verify the age of the individual
23 ordering or receiving the wine from the direct shipper.

24 (f) Stamp, print, or label on the outside of the shipping
25 container that the package "Contains Alcohol. Must be delivered to
26 a person 21 years of age or older." The recipient at the time of
27 the delivery ~~is required to~~ **SHALL** provide photo identification

1 verifying his or her age along with a signature.

2 (g) Place a label on the top panel of the shipping container
3 containing the direct shipper license number, the order number, the
4 name and address of the individual placing the order, and the name
5 of the designated recipient if different from the name of the
6 individual placing the order.

7 (h) Direct ship not more than 1,500 9-liter cases, or 13,500
8 liters in total, of wine in a calendar year to ~~Michigan~~-consumers
9 **IN THIS STATE**. If a direct shipper, whether located in this state
10 or outside this state, owns, in whole or in part, or commonly
11 manages 1 or more direct shippers, it shall not in combination ship
12 to consumers in this state more than 13,500 liters of wine in the
13 aggregate.

14 (i) Pay wine taxes quarterly and report to the commission
15 quarterly the total amount of wine, by type, brand, and price,
16 shipped to consumers in this state during the preceding calendar
17 quarter, and the order numbers.

18 (j) Authorize and allow the commission and the department of
19 treasury to conduct an audit of the direct shipper's records.

20 (k) Consent and submit to the jurisdiction of the commission,
21 the department of treasury, and the courts of this state concerning
22 enforcement of this section and any related laws, rules, and
23 regulations.

24 (4) Notwithstanding subsection (3), in the case of a sale,
25 delivery, or importation of alcoholic liquor occurring by any means
26 described in subsection (3), a person taking the order on behalf of
27 the direct shipper ~~must~~**SHALL** comply with subsection (3)(c) through

1 (g) .

2 (5) ~~The~~ **A** person ~~who~~ **THAT** delivers the wine **FOR A DIRECT**
3 **SHIPPER UNDER THIS SECTION** shall verify that the individual
4 accepting delivery is ~~of legal age~~ **21 YEARS OF AGE OR OLDER** and is
5 the individual who placed the order or the designated recipient, is
6 an individual ~~of legal age~~ **21 YEARS OF AGE OR OLDER** currently
7 occupying or present at the address, or is an individual otherwise
8 authorized through a rule promulgated under this act by the
9 commission to receive alcoholic liquor under this section. If the
10 delivery person, after a diligent inquiry, determines that the
11 purchaser or designated recipient is not ~~of legal age~~, **21 YEARS AGE**
12 **OR OLDER**, the delivery person shall return the wine to the direct
13 shipper. A delivery person who returns wine to the direct shipper
14 ~~due to inability to obtain the purchaser's~~ **BECAUSE THE PURCHASER** or
15 ~~designated recipient's legal age~~ **RECIPIENT IS NOT 21 YEARS OF AGE**
16 **OR OLDER** is not liable for any damages suffered by the purchaser or
17 direct shipper.

18 (6) All spirits for sale, use, storage, or distribution in
19 this state, shall originally be purchased by and imported into the
20 state by the commission, or by prior written authority of the
21 commission.

22 (7) This section does not apply ~~in the case of an~~ **TO** alcoholic
23 liquor brought into this state for personal or household use in an
24 amount permitted by federal law by ~~a person of legal age to~~
25 ~~purchase alcoholic liquor~~ **AN INDIVIDUAL 21 YEARS OF AGE OR OLDER** at
26 the time of reentry into this state from without the territorial
27 limits of the United States if the ~~person~~ **INDIVIDUAL** has been

1 outside the territorial limits of the United States for more than
2 48 hours and has not brought alcoholic liquor into the United
3 States during the preceding 30 days.

4 ~~(8) A person who is of legal age to purchase alcoholic liquor~~
5 **AN INDIVIDUAL 21 YEARS OF AGE OR OLDER** may do either of the
6 following in relation to alcoholic liquor that contains less than
7 21% alcohol by volume:

8 (a) Personally transport from another state, once in a 24-hour
9 period, not more than 312 ounces of alcoholic liquor for that
10 ~~person's~~ **INDIVIDUAL'S** personal use, notwithstanding subsection (1).

11 (b) Ship or import from another state alcoholic liquor for
12 that ~~person's~~ **INDIVIDUAL'S** personal use ~~so long as IF~~ that personal
13 importation is done in compliance with subsection (1).

14 (9) A direct shipper shall not ~~engage in the sale, delivery,~~
15 ~~or importation of~~ **SELL, DELIVER, OR IMPORT** wine to a consumer
16 unless it applies for and is granted a direct shipper license from
17 the commission. This subsection does not prohibit wine tasting or
18 the selling at retail by a wine maker of wines he or she produced
19 and bottled or wine manufactured for that wine maker by another
20 wine maker, if done in compliance with this act. Only the following
21 persons qualify for the issuance of a direct shipper license:

22 (a) A ~~licensed~~ wine maker.

23 (b) A wine producer and bottler located inside this country
24 but outside of this state holding both a federal basic permit
25 issued by the alcohol and tobacco tax and trade bureau and a
26 license to manufacture wine in its state of domicile.

27 (10) An applicant for a direct shipper license shall submit an

1 application to the commission in a written or electronic format
 2 provided by the commission and accompanied by an application and
 3 initial license fee of \$100.00. The application shall be
 4 accompanied by a copy or other evidence of the existing federal
 5 basic permit or license, or both, held by the applicant. The direct
 6 shipper may renew its license annually by submission of a license
 7 renewal fee of \$100.00 and a completed renewal application. The
 8 commission shall use the fees collected under this section to
 9 conduct investigations and audits of direct shippers. The failure
 10 to renew, or the revocation or suspension of, the applicant's
 11 existing Michigan license, federal basic permit, or license to
 12 manufacture wine in its state of domicile is grounds for revocation
 13 or denial of the direct shipper license. If a direct shipper is
 14 found guilty of violating this act or a rule promulgated by the
 15 commission, the commission shall notify both the alcoholic liquor
 16 control agency in the direct shipper's state of domicile and the
 17 alcohol and tobacco tax and trade bureau of the United States
 18 department of treasury of the violation.

19 (11) ~~A-EXCEPT AS OTHERWISE PROVIDED UNDER SUBSECTION (12), A~~
 20 retailer that holds a specially designated merchant license in this
 21 state; an out-of-state retailer that holds its state's substantial
 22 equivalent license; or a brewpub, ~~microbrewer~~, **MICRO BREWER**, or an
 23 out-of-state entity that is the substantial equivalent of a brewpub
 24 or ~~microbrewer~~ **MICRO BREWER** may deliver beer and wine to the home
 25 or other designated location of a consumer in this state if all of
 26 the following conditions are met: ~~and except as otherwise provided~~
 27 ~~in subsection (12):~~

1 (a) The beer or wine, or both, is delivered by the retailer's,
2 brewpub's, or ~~microbrewer's~~ **MICRO BREWER'S** employee and not by an
3 agent or by a third party delivery service.

4 (b) The retailer, brewpub, or ~~microbrewer~~ **MICRO BREWER** or its
5 employee who delivers the beer or wine, or both, verifies that the
6 ~~person~~ **INDIVIDUAL** accepting delivery is at least 21 years of age.

7 (c) If the retailer, brewpub, or ~~microbrewer~~ **MICRO BREWER** or
8 its employee intends to provide service to consumers, the retailer,
9 brewpub, or ~~microbrewer~~ **MICRO BREWER** or its employee providing the
10 service ~~must have~~ **HAS** received alcohol server training through a
11 server training program approved by the commission.

12 (12) A retailer that holds a specially designated merchant
13 license in this state or an out-of-state retailer that holds its
14 state's substantial equivalent license may utilize a third party
15 that provides delivery service to municipalities in this state that
16 are surrounded by water and inaccessible by motor vehicle to
17 deliver beer and wine to the home or other designated location of
18 that consumer ~~is~~ **IF** the delivery service is approved by the
19 commission and agrees to verify that the ~~person~~ **INDIVIDUAL**
20 accepting delivery of the beer and wine is at least 21 years of
21 age.

22 (13) **FOR PURPOSES OF SUBSECTION (1), A QUALIFIED MICRO BREWER**
23 **OR AN OUT-OF-STATE ENTITY THAT IS THE SUBSTANTIAL EQUIVALENT OF A**
24 **QUALIFIED MICRO BREWER MAY SELL AND DELIVER BEER TO A RETAILER IN**
25 **THIS STATE IF ALL OF THE FOLLOWING CONDITIONS ARE MET:**

26 (A) **THE RETAILER IS NOT LOCATED IN A SALES TERRITORY FOR WHICH**
27 **THE QUALIFIED MICRO BREWER HAS GRANTED EXCLUSIVE SALES RIGHTS TO A**

1 WHOLESALER PURSUANT TO SECTIONS 401 AND 403 FOR THE SALE OF ANY
2 BRAND OR BRANDS OF BEER PRODUCED BY THAT MICRO BREWER.

3 (B) THE BEER IS SOLD AND DELIVERED BY AN EMPLOYEE OF THE
4 QUALIFIED MICRO BREWER, NOT AN AGENT, AND IS TRANSPORTED AND
5 DELIVERED UTILIZING A VEHICLE OWNED BY THE QUALIFIED MICRO BREWER,
6 NOT BY A THIRD-PARTY DELIVERY SERVICE.

7 (C) THE QUALIFIED MICRO BREWER IS IN COMPLIANCE WITH
8 APPLICABLE STATE AND FEDERAL LAW AND APPLICABLE REGULATORY
9 PROVISIONS OF THIS ACT AND RULES ADOPTED BY THE COMMISSION UNDER
10 THIS ACT INCLUDING, BUT NOT LIMITED TO, THOSE REQUIREMENTS RELATED
11 TO EACH OF THE FOLLOWING:

12 (i) EMPLOYEES THAT SELL AND DELIVER BEER TO RETAILERS.

13 (ii) VEHICLES USED TO DELIVER BEER TO RETAILERS.

14 (iii) PRICE SCHEDULES AND TEMPORARY PRICE REDUCTIONS.

15 (14) ~~(13)~~—As used in this section:

16 (a) "Computer" means any connected, directly interoperable or
17 interactive device, equipment, or facility that uses a computer
18 program or other instructions to perform specific operations
19 including logical, arithmetic, or memory functions with or on
20 computer data or a computer program and that can store, retrieve,
21 alter, or communicate the results of the operations to a person,
22 computer program, computer, computer system, or computer network.

23 (b) "Computer network" means the interconnection of hardwire
24 or wireless communication lines with a computer through remote
25 terminals, or a complex consisting of 2 or more interconnected
26 computers.

27 (c) "Computer program" means a series of internal or external

1 instructions communicated in a form acceptable to a computer that
2 directs the functioning of a computer, computer system, or computer
3 network in a manner designed to provide or produce products or
4 results from the computer, computer system, or computer network.

5 (d) "Computer system" means a set of related, connected or
6 unconnected, computer equipment, devices, software, or hardware.

7 (e) "Consumer" means an individual who purchases wine for
8 personal consumption and not for resale.

9 (f) "Device" includes, but is not limited to, an electronic,
10 magnetic, electrochemical, biochemical, hydraulic, optical, or
11 organic object that performs input, output, or storage functions by
12 the manipulation of electronic, magnetic, or other impulses.

13 (g) "Diligent inquiry" means a diligent good faith effort to
14 determine the age of ~~a person, which~~ **AN INDIVIDUAL, THAT** includes
15 at least an examination of an official Michigan operator's or
16 chauffeur's license, an official Michigan personal identification
17 card, or any other bona fide picture identification that
18 establishes the identity and age of the ~~person~~. **INDIVIDUAL.**

19 (h) "Direct shipper" means a person who ~~engages in the sale,~~
20 ~~delivery, or importation of~~ **SELLS, DELIVERS, OR IMPORTS** wine, to
21 consumers in this state, that he or she produces and bottles or
22 wine that is manufactured by a wine maker for another wine maker
23 and that is transacted or caused to be transacted through the use
24 of any mail order, internet, telephone, computer, device, or other
25 electronic means, or sells directly to consumers on the winery
26 premises.

27 (i) "Identification verification service" means any internet-

1 based service approved by the commission specializing in age and
2 identity verification.

3 (J) "QUALIFIED MICRO BREWER" MEANS A MICRO BREWER THAT
4 PRODUCES IN TOTAL LESS THAN 1,000 BARRELS OF BEER PER YEAR. IN
5 DETERMINING THE 1,000-BARREL THRESHOLD, ALL BRANDS AND LABELS OF A
6 MICRO BREWER, WHETHER BREWED IN THIS STATE OR OUTSIDE THIS STATE,
7 SHALL BE COMBINED.

8 Enacting section 1. This amendatory act does not take effect
9 unless all of the following bills of the 97th Legislature are
10 enacted into law:

- 11 (a) Senate Bill No. 504.
- 12 (b) Senate Bill No. 505.
- 13 (c) Senate Bill No. 506.
- 14 (d) Senate Bill No. 507.
- 15 (e) Senate Bill No. 651.
- 16 (f) House Bill No. 4277.
- 17 (g) House Bill No. 4709.
- 18 (h) House Bill No. 4710.
- 19 (i) House Bill No. 4711.