

SENATE SUBSTITUTE FOR  
HOUSE BILL NO. 5578

A bill to amend 1998 PA 58, entitled  
"Michigan liquor control code of 1998,"  
by amending section 205 (MCL 436.1205), as amended by 2010 PA 213.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1       Sec. 205. (1) The commission shall, as provided in section  
2   203(1), by order appoint authorized distribution agents to ~~engage~~  
3   ~~in the warehousing and delivery of~~ **WAREHOUSE AND DELIVER** spirits in  
4   this state so as to ensure that all retail licensees ~~continue to be~~  
5   **ARE** properly serviced with spirits. An authorized distribution  
6   agent is subject to uniform requirements, including business  
7   operating procedures, that the commission may prescribe by rule,  
8   subject to this section.

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

1 (a) The person satisfies all applicable commission rules  
2 prescribing qualifications for licensure promulgated under section  
3 215.

4 (b) The person has entered into a written agreement or  
5 contract with a supplier of spirits ~~for the purposes of warehousing~~  
6 ~~and delivering~~ **TO WAREHOUSE AND DELIVER** a brand or brands of  
7 spirits of that supplier of spirits.

8 (c) The person has an adequate warehousing facility located in  
9 this state ~~for the storing of~~ **TO STORE** spirits from which all  
10 delivery of spirits to retail licensees shall be made.

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

16 (4) An authorized distribution agent shall deliver to each  
17 retailer located in its assigned distribution area on at least a  
18 weekly basis if the order meets the minimum requirements. Except  
19 that in those weeks that accompany a state holiday, the commission  
20 may order a modified delivery schedule provided that a retailer  
21 waits not longer than 9 days between deliveries due to a modified  
22 delivery schedule. The commission shall provide for an integrated  
23 on-line ordering system for spirits and shall require the  
24 continuance of any ordering system in existence on the activation  
25 date of the system established under section 206. The minimum  
26 requirements shall be set by the commission and shall be a  
27 sufficient number of bottles to comprise not more than 2 cases. A

1 retailer may pick up the product at the authorized distribution  
2 agent's warehouse. To avoid occasional emergency outages of  
3 spirits, a retail licensee may make up to 12 special emergency  
4 orders to an authorized distribution agent ~~per~~ **IN EACH** calendar  
5 year. ~~which order shall be made~~ **AN AUTHORIZED DISTRIBUTION AGENT**  
6 **SHALL MAKE A SPECIAL EMERGENCY ORDER** available to the retail  
7 licensee within 18 hours of the placing of the order. ~~A~~ **AN**  
8 **AUTHORIZED DISTRIBUTION AGENT SHALL MAKE A** special emergency order  
9 placed on Saturday or Sunday ~~shall be made~~ available to the retail  
10 licensee before noon on the following Monday. An authorized  
11 distribution agent may impose a fee of up to \$20.00 to deliver a  
12 special emergency order to a retail licensee.

13 (5) In locations inaccessible to a motor vehicle as that term  
14 is defined by the Michigan vehicle code, 1949 PA 300, MCL 257.1 to  
15 257.923, ~~the~~ **AN** authorized distribution agent shall arrange that a  
16 delivery of spirits to a retailer be in compliance with the  
17 following procedures:

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

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

27 (c) The ferry transport company or company representing any

1 other form of conveyance shall take the retailer's payment to the  
2 mainland dock and give that payment to the authorized distribution  
3 agent's driver.

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

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

10 (6) ~~The~~ **AN** authorized distribution agent is responsible for  
11 the payment of all transportation and delivery charges imposed by  
12 the ferry, drayage, or other conveyance company and is responsible  
13 for all breakage and any shortages, whether attributable to the  
14 ferry, drayage, or other conveyance company or any combination of  
15 those companies, until the order is delivered to the retailer's  
16 establishment. This subsection does not ~~in any way~~ prevent the  
17 authorized distribution agent from seeking reimbursement or damages  
18 from any company conveying the authorized distribution agent's  
19 product.

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

24 (8) An authorized distribution agent or prospective authorized  
25 distribution agent shall maintain and make available to the  
26 commission or its representatives, upon notice, any contract or  
27 written agreement it ~~may have~~ **HAS** with a supplier of spirits or

1 other authorized distribution agent for the warehousing and  
2 ~~delivery of~~ **DELIVERING** spirits in this state.

3 (9) For any violation of this act, rules promulgated under  
4 this act, or the terms of an order appointing an authorized  
5 distribution agent, an authorized distribution agent ~~shall be~~ **IS**  
6 subject to the suspension, revocation, forfeiture, and penalty  
7 provisions of sections 903(1) and 907 in the same manner in which a  
8 licensee would be subject to those provisions. An authorized  
9 distribution agent aggrieved by a penalty imposed by the commission  
10 may invoke the hearing and appeal procedures of section 903(2) and  
11 rules promulgated under that section.

12 (10) A specially designated distributor may sell to an on-  
13 premises licensee up to 9 liters of spirits during any 1-month  
14 period and an on-premises licensee may purchase, collectively from  
15 specially designated distributors, up to that amount during any 1-  
16 month period. Notwithstanding any other provision of this act or  
17 rule promulgated under this act, a specially designated distributor  
18 is only liable for knowingly violating this section. Records  
19 verifying these purchases shall be maintained by the on-premises  
20 licensee and be available to the commission upon request.

21 ~~—— (11) An authorized distribution agent shall demonstrate that~~  
22 ~~it has made a good faith effort to provide employment to those~~  
23 ~~former state employees who were terminated due to the privatization~~  
24 ~~of the liquor distribution system. A good faith effort is~~  
25 ~~demonstrated by the authorized distribution agent performing at~~  
26 ~~least the following actions:~~

27 ~~—— (a) Seeking from the commission a list of names and resumes of~~

~~all such former state employees who have indicated a desire for continued employment in the distribution of liquor in Michigan.~~

~~—— (b) Providing a list of employment opportunities created by the authorized distribution agent in the distribution of liquor in Michigan to each individual whose name and resume is transmitted from the commission.~~

~~—— (c) Providing an opportunity for application and interview to any terminated state worker who indicates an interest in pursuing a job opportunity with the authorized distribution agent.~~

~~—— (d) Providing a priority in hiring for those individuals who apply and interview under this process.~~

~~—— (12) Any former state employees terminated due to privatization who have reason to believe that an authorized distribution agent has not made a good faith effort to provide him or her with employment opportunities as described in subsection (11) may file a complaint with the commission who shall hear the complaint and make a determination on its validity. If the commission determines that the complaint is valid, the violation may be treated as a violation of this act and the authorized distribution agent may be subject to the suspension, revocation, forfeiture, and penalty provisions of sections 903(1) and 907.~~

~~(11) (13)~~ In addition to paying a vendor of spirits the acquisition price for purchasing spirits, the commission may pay a vendor of spirits an additional amount of not less than \$4.50 and not more than \$7.50 for each case of spirits purchased as an offset to the costs being incurred by that vendor of spirits in contracting with an authorized distribution agent for the

1 warehousing and ~~delivery of~~ **DELIVERING** spirits to retailers. The  
2 payment described in this subsection shall not be included in the  
3 cost of purchasing spirits by the commission and shall not be  
4 subject to the commission's markup, special taxes, or state sales  
5 tax. The per-case offset established by this subsection may be  
6 increased by the state administrative board each January to reflect  
7 reasonable increases in the authorized distribution agent's cost of  
8 warehousing and ~~delivery.~~ **DELIVERING.** As used in this subsection,  
9 "case" means a container holding twelve 750 ml bottles of spirits  
10 or other containers containing spirits which are standard to the  
11 industry.