

SENATE BILL NO. 512

May 20, 1997, Introduced by Senators NORTH and KOIVISTO
and referred to the Committee on Economic Development,
International Trade and Regulatory Affairs.

A bill to amend 1933 (Ex Sess) PA 8, entitled
"The Michigan liquor control act,"
by amending section 3a (MCL 436.3a), as added by 1996 PA 440.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 3a. (1) If the commission privatizes any portion of
2 the system existing on ~~the effective date of the amendatory act~~
3 ~~that added this section~~ DECEMBER 19, 1996, under which spirits
4 are warehoused or distributed, the commission shall, as provided
5 in section 3(1), by order appoint authorized distribution agents
6 to engage in the warehousing and delivery of spirits in this
7 state so as to ensure that all retail licensees continue to be
8 properly serviced with spirits. An authorized distribution agent
9 is subject to uniform requirements, including business operating
10 procedures, which the commission may prescribe by rule, subject
11 to this section.

1 (2) A person is eligible for appointment by the commission
2 as an authorized distribution agent if the following circum-
3 stances exist:

4 (a) The person satisfies all applicable commission rules
5 prescribing qualifications for licensure promulgated under sec-
6 tion 7.

7 (b) The person has entered into a written agreement or con-
8 tract with a supplier of spirits for the purposes of warehousing
9 and delivering a brand or brands of spirits of that supplier of
10 spirits.

11 (c) The person has an adequate warehousing facility located
12 in this state for the storing of spirits from which all delivery
13 of spirits to retail licensees shall be made.

14 (3) An authorized distribution agent shall not have a direct
15 or indirect interest in a supplier of spirits or in a retailer.
16 A supplier of spirits or a retailer shall not have a direct or
17 indirect interest in an authorized distribution agent. An autho-
18 rized distribution agent shall not hold title to spirits. After
19 September 24, 1996, an authorized distribution agent or an appli-
20 cant to become an authorized distribution agent who directly or
21 indirectly becomes licensed subsequently as a wholesaler shall
22 not be appointed or authorized to sell or distribute a brand of
23 wine in an area for which a wholesaler has been assigned or
24 authorized to sell or distribute that brand under an agreement
25 required by this act. A wholesaler who directly or indirectly
26 becomes an authorized distribution agent shall not be appointed
27 or authorized to sell or distribute a brand of wine to a retailer

1 in an area for which another wholesaler has been assigned or
2 authorized to sell or distribute that brand under an agreement
3 required by this act, if the wholesaler was not selling or dis-
4 tributing that brand to retailers in that area on or before
5 September 24, 1996.

6 (4) An authorized distribution agent shall deliver to each
7 retailer located in its assigned distribution area on at least a
8 weekly basis if the order meets the minimum requirements. The
9 minimum requirements shall be set by the commission and shall be
10 a sufficient number of bottles to comprise not more than 2 cases
11 and not less than 1 case. A retailer may pick up the product at
12 the authorized distribution agent's warehouse. To avoid occa-
13 sional emergency outages of spirits, a retail licensee may make
14 up to 12 special emergency orders to an authorized distribution
15 agent per calendar year which order shall be made available to
16 the retail licensee within 18 hours of the placing of the order.
17 A special emergency order placed on Saturday or Sunday shall be
18 made available to the retail licensee before noon on the follow-
19 ing Monday. An authorized distribution agent may impose a fee of
20 up to \$20.00 to deliver a special emergency order to a retail
21 licensee.

22 (5) IN LOCATIONS INACCESSIBLE TO A MOTOR VEHICLE AS THAT
23 TERM IS DEFINED BY THE MICHIGAN VEHICLE CODE, 1949 PA 300, MCL
24 257.1 TO 257.923, THE AUTHORIZED DISTRIBUTION AGENT SHALL ARRANGE
25 THAT A DELIVERY OF SPIRITS TO A RETAILER BE IN COMPLIANCE WITH
26 THE FOLLOWING PROCEDURES:

1 (A) AFTER PROCESSING AN ORDER FROM A RETAILER, AN AUTHORIZED
2 DISTRIBUTION AGENT SHALL CONTACT A RETAILER TO CONFIRM THE
3 QUANTITY OF CASES OR BOTTLES, OR BOTH, AND THE EXACT DOLLAR TOTAL
4 OF THE ORDER.

5 (B) THE AUTHORIZED DISTRIBUTION AGENT SHALL HAVE THE RESPON-
6 SIBILITY TO COORDINATE WITH THE RETAILER THE DATE AND TIME A
7 DRIVER IS SCHEDULED TO DELIVER THE ORDER TO A FERRY TRANSPORT
8 DOCK, SHALL ARRANGE ANY FERRY, DRAYAGE, OR OTHER APPROPRIATE
9 SERVICE, AND SHALL PICK UP THE RETAILER'S PAYMENT AT THAT TIME.

10 (C) THE FERRY TRANSPORT COMPANY OR COMPANY REPRESENTING ANY
11 OTHER FORM OF CONVEYANCE SHALL TAKE THE RETAILER'S PAYMENT TO THE
12 MAINLAND DOCK AND GIVE THAT PAYMENT TO THE AUTHORIZED DISTRIBUTION
13 AGENT'S DRIVER.

14 (D) THE FERRY TRANSPORT COMPANY OR COMPANY REPRESENTING ANY
15 OTHER FORM OF CONVEYANCE SHALL TRANSPORT THE ORDER TO THE DRAYAGE
16 OR OTHER APPROPRIATE COMPANY AT THE ISLAND DOCK FOR IMMEDIATE
17 DELIVERY TO THE RETAILER.

18 (E) THE DRAYAGE OR OTHER APPROPRIATE COMPANY SHALL DELIVER
19 THE ORDER TO THE RETAILER.

20 (6) THE AUTHORIZED DISTRIBUTION AGENT IS RESPONSIBLE FOR THE
21 PAYMENT OF ALL TRANSPORTATION AND DELIVERY CHARGES IMPOSED BY THE
22 FERRY, DRAYAGE, OR OTHER CONVEYANCE COMPANY AND IS RESPONSIBLE
23 FOR ALL BREAKAGE AND ANY SHORTAGES, WHETHER ATTRIBUTABLE TO THE
24 FERRY, DRAYAGE, OR OTHER CONVEYANCE COMPANY OR ANY COMBINATION OF
25 THOSE COMPANIES, UNTIL THE ORDER IS DELIVERED TO THE RETAILER'S
26 ESTABLISHMENT. THIS SUBSECTION DOES NOT IN ANY WAY PREVENT THE
27 AUTHORIZED DISTRIBUTION AGENT FROM SEEKING REIMBURSEMENT OR

1 DAMAGES FROM ANY COMPANY CONVEYING THE AUTHORIZED DISTRIBUTION
2 AGENT'S PRODUCT.

3 (7) ~~—(5)—~~ Except as otherwise provided in subsection (4), an
4 authorized distribution agent shall not charge a delivery fee or
5 a split-case fee for delivery of spirits sold by the commission
6 to a retailer.

7 (8) ~~—(6)—~~ An authorized distribution agent or prospective
8 authorized distribution agent shall maintain and make available
9 to the commission or its representatives, upon notice, any con-
10 tract or written agreement it may have with a supplier of spirits
11 or other authorized distribution agent for the warehousing and
12 delivery of spirits in this state.

13 (9) ~~—(7)—~~ For any violation of this act, rules promulgated
14 under this act, or the terms of an order appointing an authorized
15 distribution agent, an authorized distribution agent shall be
16 subject to the suspension, revocation, forfeiture, and penalty
17 provisions of sections 20(1) and 21 in the same manner in which a
18 licensee would be subject to those provisions. An authorized
19 distribution agent aggrieved by a penalty imposed by the commis-
20 sion may invoke the hearing and appeal procedures of section
21 20(2) and rules promulgated under that section.

22 (10) ~~—(8)—~~ A specially designated distributor may sell to an
23 on-premises licensee up to 9 liters of spirits during any 1-month
24 period and an on-premises licensee may purchase up to that amount
25 during any 1-month period. Notwithstanding any other provision
26 of this act or rule promulgated under this act, a specially
27 designated distributor is only liable for knowingly violating

1 this section. Records verifying these purchases shall be
2 maintained by the on-premises licensee and be available to the
3 commission upon request.

4 (11) ~~(9)~~ An authorized distribution agent shall demon-
5 strate that it has made a good faith effort to provide employment
6 to those former state employees who were terminated due to the
7 privatization of the liquor distribution system. A good faith
8 effort is demonstrated by the authorized distribution agent per-
9 forming at least the following actions:

10 (a) Seeking from the commission a list of names and resumes
11 of all such former state employees who have indicated a desire
12 for continued employment in the distribution of liquor in
13 Michigan.

14 (b) Providing a list of employment opportunities created by
15 the authorized distribution agent in the distribution of liquor
16 in Michigan to each individual whose name and resume is transmit-
17 ted from the commission.

18 (c) Providing an opportunity for application and interview
19 to any terminated state worker who indicates an interest in pur-
20 suing a job opportunity with the authorized distribution agent.

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

23 (12) ~~(10)~~ Any former state employees terminated due to
24 privatization who have reason to believe that an authorized dis-
25 tribution agent has not made a good faith effort to provide him
26 or her with employment opportunities as described in subsection
27 ~~(9)~~ (11) may file a complaint with the commission who shall

1 hear the complaint and make a determination on its validity. If
2 the commission determines that the complaint is valid, the viola-
3 tion may be treated as a violation of this act and the authorized
4 distribution agent may be subject to the suspension, revocation,
5 forfeiture, and penalty provisions of sections 20(1) and 21.

6 (13) ~~(11)~~ In addition to paying a vendor of spirits the
7 acquisition price for purchasing spirits, the commission may pay
8 a vendor of spirits an additional amount of not less than \$4.50
9 and not more than \$7.50 for each case of spirits purchased as an
10 offset to the costs being incurred by that vendor of spirits in
11 contracting with an authorized distribution agent for the ware-
12 housing and delivery of spirits to retailers. The payment
13 described in this subsection shall not be included in the cost of
14 purchasing spirits by the commission and shall not be subject to
15 the commission's markup, special taxes, or state sales tax. The
16 per-case offset established by this subsection may be increased
17 by the state administrative board each January to reflect reason-
18 able increases in the authorized distribution agent's cost of
19 warehousing and delivery. As used in this subsection, "case"
20 means a container holding twelve 750 ml bottles of spirits or
21 other containers containing spirits which are standard to the
22 industry.