



Senate Fiscal Agency  
P. O. Box 30036  
Lansing, Michigan 48909-7536



## BILL ANALYSIS

Telephone: (517) 373-5383  
Fax: (517) 373-1986  
TDD: (517) 373-0543

House Bill 4959 (Substitute H-3 as passed by the House)  
Sponsor: Representative Chris Ward  
House Committee: Regulatory Reform  
Senate Committee: Economic Development, Small Business and Regulatory Reform

Date Completed: 11-30-05

**CONTENT**

**The bill would amend the Michigan Liquor Control Code to do the following:**

- **Authorize the Liquor Control Commission to grant a direct shipper license that would allow wine makers holding certain licenses to engage in the sale, delivery, or importation of wine to retail customers.**
- **Allow only a licensed direct shipper to sell, deliver, or import wine by mail order, internet, or other electronic means, and establish criteria for the retail sale of wine by those means.**
- **Limit the retail sale, delivery, or importation of wine by a direct shipper to consumers in the State to not more than 4,500 liters annually.**
- **Create the "Direct Shipper Enforcement Revolving Fund".**
- **State a legislative intent that the direct shipment of wine be prohibited if any part of the bill were held invalid or unconstitutional.**

("Direct shipper" would mean a person who engages in the sale, delivery, or importation of wine to a retail customer through the use of any mail order, internet, telephone, computer, device, or other electronic means.)

Direct Shipper License

Under the bill, a direct shipper could not engage in the sale, delivery, or importation of wine to a retail customer unless it applied for and was granted a direct shipper license from the Commission.

Only the following persons would qualify for the issuance of a direct shipper license:

- A wine maker holding a wine maker license in the State.
- A wine maker located outside of the State and holding an outstate seller of wine license.
- A wine maker located outside of the State and not currently licensed as an outstate seller of wine but holding both a Federal basic permit issued by the Bureau of Alcohol, Tobacco, and Firearms and a license to manufacture wine in its state of domicile.

An applicant for a direct shipper license would have to submit an application to the Commission in a written or electronic format provided by the Commission, accompanied by an application fee and an initial license fee, both to be determined by the Commission. If the application were denied, the Commission would have to refund only the initial license

fee. The application also would have to be accompanied by a copy or other evidence of the existing Federal basic permit or license, or both, held by the applicant.

The direct shipper could renew its license annually by submitting a license renewal fee, which would be determined by the Commission, and a renewal application.

The Commission would have to use the fees under these provisions collected to conduct investigations and audits of direct shippers.

The failure to renew or the revocation or suspension of the applicant's existing Michigan license, Federal basic permit, or license to manufacture wine in its state of domicile would be grounds for revocation or denial of the direct shipper license.

If a direct shipper were found guilty of violating the Code or administrative rule of the Commission, the Commission would have to give notice of the violation to both the alcoholic liquor control agency in the direct shipper's state of domicile and the Alcohol and Tobacco Tax and Trade Bureau of the United States Department of Treasury.

The bill specifies that these provisions would not prohibit wine tasting or the selling at retail by a wine maker of wines he or she produced and bottled, if done in compliance with the Code.

Under the Code, "wine maker" means any person licensed by the Commission to manufacture wine and sell, at wholesale or retail, wine manufactured by that person. Under the bill, "wine maker" would mean any person licensed by the Commission to manufacture wine, to sell that wine to a wholesaler, at retail on the licensed winery premises, and as provided for in Sections 537 and 603 of the Code. (Section 537 describes classes of vendors, which would include direct shippers under the bill. Section 603 generally prohibits a vendor from having a financial interest in another vendor.)

#### Sale, Delivery, or Importation of Wine

Under the bill, only a direct shipper could sell, deliver, or import wine by means of any mail order, internet, telephone, computer, device, or other electronic means. If a retail sale, delivery, or importation of wine occurred by any of those means, the direct shipper would have to comply with all of the following.

- Hold a direct shipper license.
- Pay any applicable taxes to the Commission as required under the Code or under rules promulgated by the Commission.
- Comply with all prohibitions of the laws of the State, including sales to minors.
- Verify the age of the individual placing the order by obtaining from him or her a copy of a photo identification issued by the State or the Federal government and by using an identification verification service.
- Upon request of the Commission, make available to it any document used to verify the age of the individual ordering or receiving the wine from the direct shipper.
- Stamp, print, or label on the outside of the shipping container that the package "Contains alcohol. Must be delivered to a person 21 years of age or older." and that the recipient at the time of the delivery was required to provide photo identification verifying his or her age along with a signature.
- Place on the top side of the shipping container a stamp that represented the value of the excise tax due on the wine being shipped.
- Place on the top panel of the shipping container a label containing the name and address of the individual placing the order and the name of the designated recipient if different from the name of the individual placing the order.
- Ship to consumers in the State not more than 4,500 liters of wine annually.

- Report to the Commission quarterly the total amount of wine, by type, brand, and price, shipped to consumers in the State during the preceding calendar quarter, and the names, addresses and amount of wine ordered by and shipped to specific consumers.
- Authorize and allow the Commission and the Department of Treasury to conduct an audit of the direct shipper's records.
- Consent and submit to the jurisdiction of the Commission.

The person receiving and accepting the order on behalf of the direct shipper would have to record the name, address, date of birth, and telephone number of the person placing the order on the order form or other verifiable record of a type generated in a manner approved by the Commission and provide a duplicate to the Commission.

#### Direct Shipper Enforcement Revolving Fund

The license fee imposed on direct shipper licenses and any violation fines imposed by the Commission would have to be deposited into the Direct Shipper Enforcement Revolving Fund, which would be created within the State Treasury. The State Treasurer could receive money or other assets from any source for deposit into the Fund.

The State Treasurer would have to direct the investment of the Fund. The State Treasurer would have to credit to the Fund interest and earnings from Fund investments. Money in the Fund at the close of the fiscal year would have to remain in the Fund and would not lapse to the General Fund. The Commission could spend money from the Fund, upon appropriation, only for enforcement of Section 203 of the Code (which regulates the sale, delivery, and importation of alcoholic liquors) and related projects.

#### Other Changes

The bill would add direct shippers to the Code's classes of vendors that may sell alcoholic liquors at retail. The bill would refer to "direct shipper where wine may be sold and shipped directly to a Michigan resident 21 years of age or older for consumption off the licensed premises for personal use only".

The current vendor classes include micro brewers where beer produced by the micro brewer may be sold to a consumer for consumption on or off the brewery premises. The bill would in this class brewers selling less than 200,000 barrels of beer per year.

Presently, a brewer may not be licensed as a specially designated merchant (SDM), but the Code makes an exception for brewers who manufacture less than 200,000 barrels per year. The bill would delete that exception. (An SDM is a person licensed to sell beer and/or wine at retail for off-premises consumption.)

Under the Code, except as otherwise provided, a warehouser, mixed spirit drink manufacturer, wholesaler, outstate seller of beer, outstate seller of wine, outstate seller of mixed spirit drink, or vendor of spirits may not be licensed as an SDM or a specially designated distributor (SDD) or permitted to sell or deliver to the consumer any quantity of alcoholic liquor at retail. The bill would add wine maker and small wine maker to the list of businesses that may not be licensed as an SDM or SDD. (An SDD is a business licensed to sell packaged liquor for off-premises consumption.)

Under the Code, an SDD or SDM or any other retailer may not hold a mixed spirit drink manufacturer, wholesale, warehouse, outstate seller of beer, outstate seller of mixed drink, or outstate seller of wine license. The bill would add wine maker and small wine maker license to the list of licenses that an SDD or SDM may not hold.

## Intent

The bill specifies that if any section or part of a section of the bill were for any reason held to be invalid or unconstitutional, the remaining amendments made by the bill would not be severable and also would be invalid, and it would be the intent of the Legislature that the direct shipment of wine be prohibited.

MCL 436.1113 et al.

Legislative Analyst: J.P. Finet

## **FISCAL IMPACT**

Under the bill, the Liquor Control Commission would be authorized to issue a direct shipper license to wine makers, who then could sell a limited amount to wine directly to consumers by mail order, internet, or other electronic means. The application fee and the license fee for a direct shipper license would be determined by the Commission. Revenue from the fees would be used by the Commission for investigations and audits of direct shippers. The Direct Shipper Enforcement Revolving Fund would be created to receive direct shipper license fee revenue and any fine revenue. The Fund could be used only for enforcement activities related to direct shipment of alcoholic liquor and wine, and related projects. The amount of the revenue that would be received would depend on the amount of the fees established by the Commission, the number of licensees, and the amount of fines assessed.

Fiscal Analyst: Elizabeth Pratt  
Maria Tyszkiewicz

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.