

Act No. 268
Public Acts of 2005
Approved by the Governor
December 15, 2005
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**STATE OF MICHIGAN
93RD LEGISLATURE
REGULAR SESSION OF 2005**

Introduced by Senators McManus, Jelinek, Hammerstrom, Kuipers, Jacobs and Allen

ENROLLED SENATE BILL No. 625

AN ACT to amend 1998 PA 58, entitled "An act to create a commission for the control of the alcoholic beverage traffic within this state, and to prescribe its powers, duties, and limitations; to provide for powers and duties for certain state departments and agencies; to impose certain taxes for certain purposes; to provide for the control of the alcoholic liquor traffic within this state and to provide for the power to establish state liquor stores; to provide for the care and treatment of alcoholics; to provide for the incorporation of farmer cooperative wineries and the granting of certain rights and privileges to those cooperatives; to provide for the licensing and taxation of activities regulated under this act and the disposition of the money received under this act; to prescribe liability for retail licensees under certain circumstances and to require security for that liability; to provide procedures, defenses, and remedies regarding violations of this act; to provide for the enforcement and to prescribe penalties for violations of this act; to provide for allocation of certain funds for certain purposes; to provide for the confiscation and disposition of property seized under this act; to provide referenda under certain circumstances; and to repeal acts and parts of acts," by amending section 203 (MCL 436.1203), as amended by 2000 PA 289.

The People of the State of Michigan enact:

Sec. 203. (1) Except as provided in this section and section 301, a sale, delivery, or importation of alcoholic liquor, including alcoholic liquor for personal use, shall not be made in this state unless the sale, delivery, or importation is made by the commission, the commission's authorized agent or distributor, an authorized distribution agent approved by order of the commission, a person licensed by the commission, or by prior written order of the commission.

(2) For purposes of subsection (1), the sale, delivery, or importation of alcoholic liquor, except as otherwise provided in subsection (3), includes, but is not limited to, the sale, delivery, or importation of alcoholic liquor transacted or caused to be transacted by means of any mail order, internet, telephone, computer, device, or other electronic means. Subject to subsection (4), if a retail sale, delivery, or importation of alcoholic liquor occurs by any such means, the retailer must comply with all of the following:

- (a) Be appropriately licensed under the laws of this state.
- (b) Pay any applicable taxes to the commission or the department of treasury.
- (c) Comply with all prohibitions of the laws of this state including, but not limited to, sales to minors.

(d) Verify the age of the individual placing the order by obtaining from him or her an affirmation that he or she is of legal age to purchase alcoholic liquor. The person receiving and accepting the order shall 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 and generated in a manner approved by the commission.

(e) Upon request of the commission, make available to the commission any document used to verify the age of the individual ordering the alcoholic liquor from the retail seller.

(f) Stamp, print, or label on the outside of the shipping container language that clearly establishes in a prominent fashion that the package contains alcoholic liquor and that the recipient at the time of the delivery is required to provide identification verifying his or her age along with a signature.

(g) Place a label on the top panel of the shipping container containing the name and address of the individual placing the order and the name of the designated recipient, if any.

(3) For purposes of subsection (1), the sale, delivery, or importation of 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 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 by any means described in this subsection, the direct shipper must comply with all of the following:

(a) Hold a direct shipper license.

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

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

(d) Verify the age of the individual placing the order by obtaining from him or her a copy of a photo identification issued by this state, another state, or the federal government or by utilizing an identification verification service. The person receiving and accepting the order on behalf of the direct shipper shall 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 and generated in a manner approved by the commission and provide a duplicate to the commission.

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

(f) 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." The recipient at the time of the delivery is required to provide photo identification verifying his or her age along with a signature.

(g) Place a label on the top panel of the shipping container containing the direct shipper license number, the order number, 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.

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

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

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

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

(4) Notwithstanding subsection (2) or (3), in the case of a retail sale, delivery, or importation of alcoholic liquor occurring by any means described in subsection (2) or (3), a person taking the order on behalf of the retailer must comply with subsection (2)(c) through (g) and subsection (3)(c) through (g).

(5) The person who delivers the alcoholic liquor shall verify that the individual accepting delivery is of legal age and is the individual who placed the order or the designated recipient, is an individual of legal age currently occupying or present at the address, or is an individual otherwise authorized through a rule promulgated under this act by the commission to receive alcoholic liquor under this section. If the delivery person, after a diligent inquiry, determines that the purchaser or designated recipient is not of legal age, the delivery person shall return the alcoholic liquor to the retailer or direct shipper. A delivery person who returns alcoholic liquor to the retailer or direct shipper due to inability to obtain the purchaser's or designated recipient's legal age is not liable for any damages suffered by the purchaser, retailer, or direct shipper.

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

(7) This section does not apply in the case of an alcoholic liquor brought into this state for personal or household use in an amount permitted by federal law by a person of legal age to purchase alcoholic liquor at the time of reentry into

this state from without the territorial limits of the United States if the person has been outside the territorial limits of the United States for more than 48 hours and has not brought alcoholic liquor into the United States during the preceding 30 days.

(8) A person who is of legal age to purchase alcoholic liquor may do either of the following in relation to alcoholic liquor that contains less than 21% alcohol by volume:

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

(b) Ship or import from another state alcoholic liquor for that person's personal use so long as that personal importation is done in compliance with subsection (1).

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

(a) A licensed wine maker.

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

(10) An applicant for a direct shipper license shall submit an application to the commission in a written or electronic format provided by the commission and accompanied by an application and initial license fee of \$100.00. The application shall 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 may renew its license annually by submission of a license renewal fee of \$100.00 and a completed renewal application. The commission shall use the fees collected under this section 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 is grounds for revocation or denial of the direct shipper license. If a direct shipper is found guilty of violating this act or a rule promulgated by the commission, the commission shall notify 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 of the violation.

(11) As used in this section:

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

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

(c) "Computer program" means a series of internal or external instructions communicated in a form acceptable to a computer that directs the functioning of a computer, computer system, or computer network in a manner designed to provide or produce products or results from the computer, computer system, or computer network.

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

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

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

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

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

(i) "Identification verification service" means any internet-based service approved by the commission specializing in age and identity verification.

Enacting section 1. This amendatory act does not take effect unless House Bill No. 4959 of the 93rd Legislature is enacted into law.

Enacting section 2. If an appellate court declares this amendatory act unconstitutional, then it is the intent of the legislature that a good faith effort be made to amend section 305 of the Michigan liquor control code of 1998, 1998 PA 58, MCL 436.1305, to make it less burdensome for a small winery to terminate an agreement with a wholesaler.

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate

Sam E. Randall

Clerk of the House of Representatives

Approved

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Governor