

HOUSE BILL No. 6644

November 12, 2008, Introduced by Reps. Farrah and Ward and referred to the Committee on Regulatory Reform.

A bill to amend 1998 PA 58, entitled
"Michigan liquor control code of 1998,"
by amending section 203 (MCL 436.1203), as amended by 2005 PA 268.

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 alcoholic liquor,
3 including alcoholic liquor for personal use, shall not be made in
4 this state unless the sale, delivery, or importation is made by the
5 commission, the commission's authorized agent or distributor, an
6 authorized distribution agent approved by order of the commission,
7 a person licensed by the commission, or by prior written order of
8 the commission.

9 ~~(2) For purposes of subsection (1), the sale, delivery, or~~
10 ~~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.~~

~~1 (g) Place a label on the top panel of the shipping container~~
~~2 containing the name and address of the individual placing the order~~
~~3 and the name of the designated recipient, if any.~~

4 (2) NOTWITHSTANDING R 436.1011(7) (B) OF THE MICHIGAN
5 ADMINISTRATIVE CODE, A RETAILER SHALL NOT DELIVER ALCOHOLIC LIQUOR
6 TO A CONSUMER AT THE HOME OR BUSINESS OF THE CONSUMER OR AT ANY
7 LOCATION AWAY FROM THE LICENSED PREMISES OF THE RETAILER. THE
8 PURPOSE OF THIS SUBSECTION IS TO EXERCISE THE STATE OF MICHIGAN'S
9 AUTHORITY UNDER SECTION 2 OF AMENDMENT XXI OF THE CONSTITUTION OF
10 THE UNITED STATES AND THE INHERENT POLICE POWERS TO REGULATE THE
11 TRANSPORTATION AND DELIVERY OF ALCOHOLIC LIQUOR. THE REGULATION
12 DESCRIBED IN THIS SUBSECTION IS CONSIDERED NECESSARY FOR BOTH OF
13 THE FOLLOWING REASONS:

14 (A) TO PROMOTE THE PUBLIC HEALTH, SAFETY, AND WELFARE.

15 (B) TO MAINTAIN STRONG, STABLE, AND EFFECTIVE REGULATION BY
16 HAVING BEER AND WINE SOLD BY RETAILERS TO MICHIGAN CONSUMERS BY
17 PASSING THROUGH THE 3-TIER DISTRIBUTION SYSTEM ESTABLISHED UNDER
18 THIS ACT.

19 (3) For purposes of subsection (1), the sale, delivery, or
20 importation of wine, to consumers in this state, by a person who
21 both produces and bottles the wine or wine that is manufactured by
22 a wine maker for another wine maker and that is transacted or
23 caused to be transacted by means of any mail order, internet,
24 telephone, computer, device, or other electronic means, or sold
25 directly to a consumer on the winery premises, shall only be done
26 by a direct shipper. If a retail sale, delivery, or importation of
27 wine occurs **TO A CONSUMER** by any means described in this

1 subsection, the direct shipper must comply with all of the
2 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 placing the order on the order form or other
18 verifiable record of a type and generated in a manner approved by
19 the commission and provide a duplicate to the commission.

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

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

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

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

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

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

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

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

27 (5) The person who delivers the ~~alcoholic liquor~~ **WINE** shall

1 verify that the individual accepting delivery is of legal age and
2 is the individual who placed the order or the designated recipient,
3 is an individual of legal age currently occupying or present at the
4 address, or is an individual otherwise authorized through a rule
5 promulgated under this act by the commission to receive alcoholic
6 liquor under this section. If the delivery person, after a diligent
7 inquiry, determines that the purchaser or designated recipient is
8 not of legal age, the delivery person shall return the ~~alcoholic~~
9 ~~liquor~~ **WINE** to the ~~retailer or~~ direct shipper. A delivery person
10 who returns ~~alcoholic liquor~~ **WINE** to the ~~retailer or~~ direct shipper
11 due to inability to obtain the purchaser's or designated
12 recipient's legal age is not liable for any damages suffered by the
13 purchaser, ~~retailer,~~ or direct shipper.

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

18 (7) This section does not apply in the case of an alcoholic
19 liquor brought into this state for personal or household use in an
20 amount permitted by federal law by a person of legal age to
21 purchase alcoholic liquor at the time of reentry into this state
22 from without the territorial limits of the United States if the
23 person has been outside the territorial limits of the United States
24 for more than 48 hours and has not brought alcoholic liquor into
25 the United States during the preceding 30 days.

26 (8) A person who is of legal age to purchase alcoholic liquor
27 may do either of the following in relation to alcoholic liquor that

1 contains less than 21% alcohol by volume:

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

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

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

16 (a) A licensed wine maker.

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

21 (10) An applicant for a direct shipper license shall submit an
22 application to the commission in a written or electronic format
23 provided by the commission and accompanied by an application and
24 initial license fee of \$100.00. The application shall be
25 accompanied by a copy or other evidence of the existing federal
26 basic permit or license, or both, held by the applicant. The direct
27 shipper may renew its license annually by submission of a license

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

13 (11) As used in this section:

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

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

25 (c) "Computer program" means a series of internal or external
26 instructions communicated in a form acceptable to a computer that
27 directs the functioning of a computer, computer system, or computer

1 network in a manner designed to provide or produce products or
2 results from the computer, computer system, or computer network.

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

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

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

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

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

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