

HOUSE BILL No. 5578

May 14, 2014, Introduced by Rep. Crawford 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 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

1 an authorized distribution agent if the following circumstances
2 exist:

3 (a) The person satisfies all applicable commission rules
4 prescribing qualifications for licensure promulgated under section
5 215.

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

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

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

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

1 requirements shall be set by the commission and shall be a
2 sufficient number of bottles to comprise not more than 2 cases. A
3 retailer may pick up the product at the authorized distribution
4 agent's warehouse. To avoid occasional emergency outages of
5 spirits, a retail licensee may make up to 12 special emergency
6 orders to an authorized distribution agent ~~per~~**IN EACH** calendar
7 year. ~~which order shall be made~~**AN AUTHORIZED DISTRIBUTION AGENT**
8 **SHALL MAKE A SPECIAL EMERGENCY ORDER** available to the retail
9 licensee within 18 hours of the placing of the order. ~~A~~**AN**
10 **AUTHORIZED DISTRIBUTION AGENT SHALL MAKE A** special emergency order
11 placed on Saturday or Sunday ~~shall be made~~ available to the retail
12 licensee before noon on the following Monday. An authorized
13 distribution agent may impose a fee of up to \$20.00 to deliver a
14 special emergency order to a retail licensee.

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

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

24 (b) The authorized distribution agent ~~shall have~~**HAS** the
25 responsibility to coordinate with the retailer the date and time a
26 driver is scheduled to deliver the order to a ferry transport dock,
27 shall arrange any ferry, drayage, or other appropriate service, and

1 shall pick up the retailer's payment at that time.

2 (c) The ferry transport company or company representing any
3 other form of conveyance shall take the retailer's payment to the
4 mainland dock and give that payment to the authorized distribution
5 agent's driver.

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

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

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

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

26 (8) An authorized distribution agent or prospective authorized
27 distribution agent shall maintain and make available to the

1 commission or its representatives, upon notice, any contract or
2 written agreement it ~~may have~~ **HAS** with a supplier of spirits or
3 other authorized distribution agent for the warehousing and
4 ~~delivery of~~ **DELIVERING** spirits in this state.

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

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

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

1 ~~least the following actions:~~

2 ~~—— (a) Seeking from the commission a list of names and resumes of~~
3 ~~all such former state employees who have indicated a desire for~~
4 ~~continued employment in the distribution of liquor in Michigan.~~

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

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

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

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

24 ~~(11) (13)~~—In addition to paying a vendor of spirits the
25 acquisition price for purchasing spirits, the commission may pay a
26 vendor of spirits an additional amount of not less than \$4.50 ~~and~~
27 ~~not more than \$7.50~~ for each case of spirits purchased as an offset

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