

SENATE BILL No. 650

October 24, 2013, Introduced by Senator HUNE 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 2008 PA 474.

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

1 (2) Notwithstanding R 436.1011(7)(b) and R 436.1527 of the
2 Michigan administrative code and except as provided in subsection
3 (11), a retailer shall not deliver alcoholic liquor to a ~~Michigan~~
4 consumer **IN THIS STATE** at the home or business of the consumer or
5 at any location away from the licensed premises of the retailer.
6 The purpose of this subsection is to exercise the state of
7 Michigan's authority under section 2 of amendment XXI of the
8 constitution of the United States, to maintain the inherent police
9 powers to regulate the transportation and delivery of alcoholic
10 liquor, and to promote a transparent system for the transportation
11 and delivery of alcoholic liquor. The regulation described in this
12 subsection is considered necessary for both of the following
13 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 **IN**
17 **THIS STATE** by passing through the 3-tier distribution system
18 established under this act.

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

~~occurs~~ **A DIRECT SHIPPER THAT SELLS, DELIVERS, OR IMPORTS WINE** to a consumer ~~by any means described in~~ **UNDER** this subsection, ~~the direct shipper must~~ **SHALL** 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~~ **INDIVIDUAL** 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

1 the delivery ~~is required to~~ **SHALL** provide photo identification
2 verifying his or her age along with a signature.

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

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

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

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

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

25 (4) Notwithstanding subsection (3), in the case of a sale,
26 delivery, or importation of alcoholic liquor occurring by any means
27 described in subsection (3), a person taking the order on behalf of

1 the direct shipper ~~must~~ **SHALL** comply with subsection (3)(c) through
2 (g).

3 (5) ~~The~~ **A** person ~~who~~ **THAT** delivers the wine **FOR A DIRECT**
4 **SHIPPER UNDER THIS SECTION** shall verify that the individual
5 accepting delivery is ~~of legal age~~ **21 YEARS OF AGE OR OLDER** and is
6 the individual who placed the order or the designated recipient, is
7 an individual ~~of legal age~~ **21 YEARS OF AGE OR OLDER** currently
8 occupying or present at the address, or is an individual otherwise
9 authorized through a rule promulgated under this act by the
10 commission to receive alcoholic liquor under this section. If the
11 delivery person, after a diligent inquiry, determines that the
12 purchaser or designated recipient is not ~~of legal age~~, **21 YEARS AGE**
13 **OR OLDER**, the delivery person shall return the wine to the direct
14 shipper. A delivery person who returns wine to the direct shipper
15 ~~due to inability to obtain the purchaser's~~ **BECAUSE THE PURCHASER** or
16 ~~designated recipient's legal age~~ **RECIPIENT IS NOT 21 YEARS OF AGE**
17 **OR OLDER** is not liable for any damages suffered by the purchaser or
18 direct shipper.

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

23 (7) This section does not apply ~~in the case of an~~ **TO** alcoholic
24 liquor brought into this state for personal or household use in an
25 amount permitted by federal law by ~~a person of legal age to~~
26 ~~purchase alcoholic liquor~~ **AN INDIVIDUAL 21 YEARS OF AGE OR OLDER** at
27 the time of reentry into this state from without the territorial

1 limits of the United States if the ~~person~~ **INDIVIDUAL** has been
2 outside the territorial limits of the United States for more than
3 48 hours and has not brought alcoholic liquor into the United
4 States during the preceding 30 days.

5 (8) ~~A person who is of legal age to purchase alcoholic liquor~~
6 **AN INDIVIDUAL 21 YEARS OF AGE OR OLDER** may do either of the
7 following in relation to alcoholic liquor that contains less than
8 21% alcohol by volume:

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

12 (b) Ship or import from another state alcoholic liquor for
13 that ~~person's~~ **INDIVIDUAL'S** personal use ~~so long as IF~~ that personal
14 importation is done in compliance with subsection (1).

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

23 (a) A ~~licensed~~ wine maker.

24 (b) A wine producer and bottler located inside this country
25 but outside of this state holding both a federal basic permit
26 issued by the alcohol and tobacco tax and trade bureau and a
27 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) ~~A~~ **EXCEPT AS OTHERWISE PROVIDED UNDER SUBSECTION (12), A** retailer that holds a specially designated merchant license in this state; an out-of-state retailer that holds its state's substantial equivalent license; or a brewpub, ~~microbrewer~~, **MICRO BREWER**, or an out-of-state entity that is the substantial equivalent of a brewpub or ~~microbrewer~~ **MICRO BREWER** may deliver beer and wine to the home or other designated location of a consumer in this state if all of the following conditions are met: ~~and except as otherwise provided~~

1 ~~in subsection (12):~~

2 (a) The beer or wine, or both, is delivered by the retailer's,
3 brewpub's, or ~~microbrewer's~~ **MICRO BREWER'S** employee and not by an
4 agent or by a third party delivery service.

5 (b) The retailer, brewpub, or ~~microbrewer~~ **MICRO BREWER** or its
6 employee who delivers the beer or wine, or both, verifies that the
7 ~~person~~ **INDIVIDUAL** accepting delivery is at least 21 years of age.

8 (c) If the retailer, brewpub, or ~~microbrewer~~ **MICRO BREWER** or
9 its employee intends to provide service to consumers, the retailer,
10 brewpub, or ~~microbrewer~~ **MICRO BREWER** or its employee providing the
11 service ~~must have~~ **HAS** received alcohol server training through a
12 server training program approved by the commission.

13 (12) A retailer that holds a specially designated merchant
14 license in this state or an out-of-state retailer that holds its
15 state's substantial equivalent license may utilize a third party
16 that provides delivery service to municipalities in this state that
17 are surrounded by water and inaccessible by motor vehicle to
18 deliver beer and wine to the home or other designated location of
19 that consumer ~~is~~ **IF** the delivery service is approved by the
20 commission and agrees to verify that the ~~person~~ **INDIVIDUAL**
21 accepting delivery of the beer and wine is at least 21 years of
22 age.

23 (13) **FOR PURPOSES OF SUBSECTION (1), A QUALIFIED MICRO BREWER**
24 **OR AN OUT-OF-STATE ENTITY THAT IS THE SUBSTANTIAL EQUIVALENT OF A**
25 **QUALIFIED MICRO BREWER MAY SELL AND DELIVER BEER TO A RETAILER IN**
26 **THIS STATE IF ALL OF THE FOLLOWING CONDITIONS ARE MET:**

27 (A) **THE RETAILER IS NOT LOCATED IN A SALES TERRITORY FOR WHICH**

1 THE QUALIFIED MICRO BREWER HAS GRANTED EXCLUSIVE SALES RIGHTS TO A
2 WHOLESALER PURSUANT TO SECTIONS 401 AND 403 FOR THE SALE OF ANY
3 BRAND OR BRANDS OF BEER PRODUCED BY THAT MICRO BREWER.

4 (B) THE BEER IS SOLD AND DELIVERED BY AN EMPLOYEE OF THE
5 QUALIFIED MICRO BREWER, NOT AN AGENT, AND IS TRANSPORTED AND
6 DELIVERED UTILIZING A VEHICLE OWNED BY THE QUALIFIED MICRO BREWER,
7 NOT BY A THIRD-PARTY DELIVERY SERVICE.

8 (C) THE QUALIFIED MICRO BREWER IS IN COMPLIANCE WITH
9 APPLICABLE STATE AND FEDERAL LAW AND APPLICABLE REGULATORY
10 PROVISIONS OF THIS ACT AND RULES ADOPTED BY THE COMMISSION UNDER
11 THIS ACT INCLUDING, BUT NOT LIMITED TO, THOSE REQUIREMENTS RELATED
12 TO EACH OF THE FOLLOWING:

13 (i) EMPLOYEES THAT SELL AND DELIVER BEER TO RETAILERS.

14 (ii) VEHICLES USED TO DELIVER BEER TO RETAILERS.

15 (iii) PRICE SCHEDULES AND TEMPORARY PRICE REDUCTIONS.

16 (14) ~~(13)~~As used in this section:

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

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

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

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

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

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

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

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

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

4 (J) "QUALIFIED MICRO BREWER" MEANS A MICRO BREWER THAT
5 PRODUCES IN TOTAL LESS THAN 1,000 BARRELS OF BEER PER YEAR. IN
6 DETERMINING THE 1,000-BARREL THRESHOLD, ALL BRANDS AND LABELS OF A
7 MICRO BREWER, WHETHER BREWED IN THIS STATE OR OUTSIDE THIS STATE,
8 SHALL BE COMBINED.

9 Enacting section 1. This amendatory act does not take effect
10 unless all of the following bills of the 97th Legislature are
11 enacted into law:

12 (a) Senate Bill No. 504.

13 (b) Senate Bill No. 505.

14 (c) Senate Bill No. 506.

15 (d) Senate Bill No. 507.

16 (e) Senate Bill No. 651.

17