

**SUBSTITUTE FOR
HOUSE BILL NO. 5342**

A bill to amend 1998 PA 58, entitled
"Michigan liquor control code of 1998,"
by amending section 203 (MCL 436.1203), as amended by 2016 PA 520.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 203. (1) Except as provided in this section and section
2 301, a person shall not sell, deliver, or import alcoholic liquor,
3 including alcoholic liquor for personal use, in this state unless
4 the sale, delivery, or importation is made by the commission, the
5 commission's authorized agent or distributor, an authorized
6 distribution agent approved by order of the commission, a person
7 licensed by the commission, or by prior written order of the
8 commission.

9 (2) Notwithstanding R 436.1011(7) (b) and R 436.1527 of the



Michigan Administrative Code and except as provided in subsections (3), (12), (13), (14), (15), and (16), a retailer shall not deliver alcoholic liquor to a consumer in this state at the home or business of the consumer or at any location away from the licensed premises of the retailer. The purpose of this subsection is to exercise this state's authority under section 2 of amendment XXI of the constitution of the United States, to maintain the inherent police powers to regulate the transportation and delivery of alcoholic liquor, and to promote a transparent system for the transportation and delivery of alcoholic liquor. The regulation described in this subsection is considered necessary for both of the following reasons:

(a) To promote the public health, safety, and welfare.

(b) To maintain strong, stable, and effective regulation by having beer and wine sold by retailers to consumers in this state by passing through the 3-tier distribution system established under this act.

(3) For purposes of subsection (1), a retailer that holds a specially designated merchant license located in this state may use a common carrier to deliver wine to a consumer in this state. A retailer that uses a common carrier to deliver wine to a consumer under this subsection shall comply with all of the following:

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

(b) Comply with all laws of this state, including, but not limited to, the prohibition on sales to minors.

(c) Verify the age of the individual placing the order by



1 obtaining from him or her a copy of a photo identification issued
2 by this state, another state, or the federal government or by using
3 an identification verification service. The person receiving and
4 accepting the order on behalf of the retailer shall record the
5 name, address, date of birth, and telephone number of the
6 individual placing the order on the order form or other verifiable
7 record of a type and generated in a manner approved by the
8 commission and provide a duplicate to the commission.

9 (d) On request of the commission, make available to the
10 commission any document used to verify the age of the individual
11 ordering or receiving the wine from the retailer.

12 (e) Stamp, print, or label on the outside of the shipping
13 container that the package "Contains Alcohol. Must be delivered to
14 a person 21 years of age or older". The recipient at the time of
15 the delivery shall provide identification verifying his or her age
16 and sign for the delivery.

17 (f) Place a label on the top panel of the shipping container
18 containing the name and address of the individual placing the order
19 and the name of the designated recipient if different from the name
20 of the individual placing the order.

21 (4) For purposes of subsection (1), a direct shipper may sell,
22 deliver, or import wine to consumers in this state by means of any
23 mail order, internet, telephone, computer, device, or other
24 electronic means, or sell directly to a consumer on the winery
25 premises. A direct shipper that sells, delivers, or imports wine to
26 a consumer under this subsection shall comply with all of the
27 following:

28 (a) Hold a direct shipper license.

29 (b) Pay any applicable taxes to the commission and pay any



1 applicable taxes to the department of treasury as directed by the
2 department of treasury. On the request of the department of
3 treasury, a direct shipper shall furnish an affidavit to verify
4 payment.

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

7 (d) Verify the age of the individual placing the order by
8 obtaining from him or her a copy of a photo identification issued
9 by this state, another state, or the federal government or by using
10 an identification verification service. The person receiving and
11 accepting the order on behalf of the direct shipper shall record
12 the name, address, date of birth, and telephone number of the
13 individual placing the order on the order form or other verifiable
14 record of a type and generated in a manner approved by the
15 commission and provide a duplicate to the commission.

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

19 (f) Stamp, print, or label on the outside of the shipping
20 container that the package "Contains Alcohol. Must be delivered to
21 a person 21 years of age or older." The recipient at the time of
22 the delivery shall provide photo identification verifying his or
23 her age and sign for the delivery.

24 (g) Place a label on the top panel of the shipping container
25 containing the name and address of the individual placing the order
26 and the name of the designated recipient if different from the name
27 of the individual placing the order. The direct shipper must have
28 received a registration number of approval from the commission for
29 any wine imported into this state. However, the registration number



1 of approval from the commission is not required to be on the
2 invoice or on the label of the wine that the direct shipper sells,
3 delivers, or imports to a consumer in this state.

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

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

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

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

21 (5) For a delivery of wine through the use of a common carrier
22 under subsection (3), a person taking the order on behalf of the
23 retailer shall comply with subsection (3)(b) to (f). For a sale,
24 delivery, or importation of wine occurring by any means described
25 in subsection (4), a person taking the order on behalf of the
26 direct shipper shall comply with subsection (4)(c) to (g).

27 (6) A person that delivers the wine for a direct shipper under
28 this section shall verify that the individual accepting delivery is
29 21 years of age or older and is the individual who placed the order



1 or the designated recipient, is an individual 21 years of age or
2 older currently occupying or present at the address, or is an
3 individual otherwise authorized through a rule promulgated under
4 this act by the commission to receive alcoholic liquor under this
5 section. If the delivery person, after a diligent inquiry,
6 determines that the purchaser or designated recipient is not 21
7 years of age or older, the delivery person shall return the wine to
8 the direct shipper. A delivery person who returns wine to the
9 direct shipper because the purchaser or designated recipient is not
10 21 years of age or older is not liable for any damages suffered by
11 the purchaser or direct shipper.

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

16 (8) This section does not apply to alcoholic liquor brought
17 into this state for personal or household use in an amount
18 permitted by federal law by an individual 21 years of age or older
19 at the time of reentry into this state from ~~without~~ **outside** the
20 territorial limits of the United States if the individual has been
21 outside the territorial limits of the United States for more than
22 48 hours and has not brought alcoholic liquor into the United
23 States during the preceding 30 days.

24 (9) An individual 21 years of age or older may do either of
25 the following in relation to alcoholic liquor that contains less
26 than 21% alcohol by volume:

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



1 (b) Ship or import from another state alcoholic liquor for
2 that individual's personal use if that personal importation is done
3 in compliance with subsection (1).

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

12 (a) A wine maker.

13 (b) A wine producer and bottler located inside this country
14 but outside of this state holding both a federal basic permit
15 issued by the Alcohol and Tobacco Tax and Trade Bureau of the
16 United States Department of Treasury and a license to manufacture
17 wine in its state of domicile.

18 (11) An applicant for a direct shipper license shall submit an
19 application to the commission in a written or electronic format
20 provided by the commission and accompanied by an application and
21 initial license fee of \$100.00. The application must be accompanied
22 by a copy or other evidence of the existing federal basic permit or
23 license, or both, held by the applicant. The direct shipper may
24 renew its license annually by submission of a license renewal fee
25 of \$100.00 and a completed renewal application. The commission
26 shall use the fees collected under this section to conduct
27 investigations and audits of direct shippers. The failure to renew,
28 or the revocation or suspension of, the applicant's existing
29 Michigan license, federal basic permit, or license to manufacture



1 wine in its state of domicile is grounds for revocation or denial
2 of the direct shipper license. If a direct shipper is found guilty
3 of violating this act or a rule promulgated by the commission, the
4 commission shall notify both the alcoholic liquor control agency in
5 the direct shipper's state of domicile and the Alcohol and Tobacco
6 Tax and Trade Bureau of the United States Department of Treasury of
7 the violation.

8 (12) A retailer that holds a specially designated merchant
9 license, a brewpub, a micro brewer, or an out-of-state entity that
10 is the substantial equivalent of a brewpub or micro brewer may
11 deliver beer and wine to the home or other designated location of a
12 consumer in this state if all of the following conditions are met:

13 (a) The beer or wine, or both, is delivered by the retailer's,
14 brewpub's, or micro brewer's employee.

15 (b) The retailer, brewpub, or micro brewer or its employee who
16 delivers the beer or wine, or both, verifies that the individual
17 accepting delivery is at least 21 years of age.

18 (c) If the retailer, brewpub, or micro brewer or its employee
19 intends to provide service to consumers, the retailer, brewpub, or
20 micro brewer or its employee providing the service has received
21 alcohol server training through a server training program approved
22 by the commission.

23 (13) A retailer that holds a specially designated merchant
24 license may use a third party that provides delivery service to
25 municipalities in this state that are surrounded by water and
26 inaccessible by motor vehicle to deliver beer and wine to the home
27 or other designated location of that consumer if the delivery
28 service is approved by the commission and agrees to verify that the
29 individual accepting delivery of the beer and wine is at least 21



1 years of age.

2 (14) A retailer that holds a specially designated distributor
3 license may deliver spirits to the home or other designated
4 location of a consumer in this state if all of the following
5 conditions are met:

6 (a) The spirits are delivered by the retailer's employee.

7 (b) The retailer or its employee who delivers the spirits
8 verifies that the individual accepting delivery is at least 21
9 years of age.

10 (c) If the retailer or its employee intends to provide service
11 to consumers, the retailer or its employee providing the service
12 has received alcohol server training through a server training
13 program approved by the commission.

14 (15) A retailer that holds a specially designated merchant
15 license located in this state may use a third party facilitator
16 service by means of the internet or mobile application to
17 facilitate the sale of beer or wine to be delivered to the home or
18 designated location of a consumer as provided in subsection (12),
19 ~~or~~ this subsection, **or, for wine only, subsection (3)**, and a third
20 party facilitator service may deliver beer or wine to a consumer on
21 behalf of a retailer that holds a specially designated merchant
22 license located in this state, if all of the following conditions
23 are met:

24 (a) If the third party facilitator service delivers beer or
25 wine under this subsection, the third party facilitator service
26 verifies that the individual accepting the delivery of the beer or
27 wine is at least 21 years of age.

28 (b) A manufacturer, warehouser, wholesaler, outstate seller of
29 beer, outstate seller of wine, supplier of spirits, or outstate



1 seller of mixed spirit ~~drinks~~**drink** does not have a direct or
2 indirect interest in the third party facilitator service.

3 (c) A manufacturer, warehouser, wholesaler, outstate seller of
4 beer, outstate seller of wine, supplier of spirits, or outstate
5 seller of mixed spirit ~~drinks~~**drink** does not aid or assist a third
6 party facilitator service by gift, loan of money or property of any
7 description, or other valuable thing as defined in section 609, and
8 a third party facilitator service does not accept the same.

9 (d) The retailer or consumer pays the fees associated with
10 deliveries provided for under this subsection.

11 (e) The third party facilitator service offers services for
12 all brands available at the retail location.

13 (16) A retailer that holds a specially designated distributor
14 license located in this state may use a third party facilitator
15 service by means of the internet or mobile application to
16 facilitate the sale of spirits to be delivered to the home or
17 designated location of a consumer as provided in subsection (14) or
18 this subsection, and a third party facilitator service may deliver
19 spirits to a consumer on behalf of a retailer that holds a
20 specially designated distributor license located in this state, if
21 all of the following conditions are met:

22 (a) If the third party facilitator service delivers spirits
23 under this subsection, the third party facilitator service verifies
24 that the individual accepting the delivery of the spirits is at
25 least 21 years of age.

26 (b) A manufacturer, warehouser, wholesaler, outstate seller of
27 beer, outstate seller of wine, supplier of spirits, or outstate
28 seller of mixed spirit drinks does not have a direct or indirect
29 interest in the third party facilitator service.



1 (c) A manufacturer, warehouser, wholesaler, outstate seller of
2 beer, outstate seller of wine, supplier of spirits, or outstate
3 seller of mixed spirit drinks does not aid or assist a third party
4 facilitator service by gift, loan of money or property of any
5 description, or other valuable thing as defined in section 609, and
6 a third party facilitator service does not accept the same.

7 (d) The retailer or consumer pays the fees associated with
8 deliveries provided for under this subsection.

9 (e) The third party facilitator service offers services for
10 all brands available at the retail location.

11 (17) A third party facilitator service shall not deliver beer,
12 wine, or spirits to a consumer under subsection (15) or (16), as
13 applicable, and shall not facilitate the sale of beer, wine, or
14 spirits under subsection (15) or (16), as applicable, unless it
15 applies for and is granted a third party facilitator service
16 license by the commission. The commission may charge a reasonable
17 application fee, initial license fee, and annual license renewal
18 fee. The commission shall establish a fee under this subsection by
19 written order.

20 (18) If a third party facilitator service used by a retailer
21 that holds a specially designated merchant or specially designated
22 distributor license under subsection (15) or (16), as applicable,
23 violates this section, the commission shall not treat the third
24 party facilitator service's violation as a violation by the
25 retailer.

26 ~~(19) For purposes of subsection (1), a qualified micro brewer~~
27 ~~or an out-of-state entity that is the substantial equivalent of a~~
28 ~~qualified micro brewer may sell and deliver beer to a retailer in~~
29 ~~this state if all of the following conditions are met:~~



~~(a) The retailer is not located in a sales territory for which the qualified micro brewer has granted exclusive sales rights to a wholesaler under sections 401 and 403 for the sale of any brand or brands of beer produced by that micro brewer.~~

~~(b) The beer is sold and delivered by an employee of the qualified micro brewer, not an agent, and is transported and delivered using a vehicle owned by the qualified micro brewer.~~

~~(c) The qualified micro brewer is in compliance with applicable state and federal law and applicable regulatory provisions of this act and rules adopted by the commission under this act including, but not limited to, those requirements related to each of the following:~~

~~(i) Employees that sell and deliver beer to retailers.~~

~~(ii) Vehicles used to deliver beer to retailers.~~

~~(iii) Price schedules and temporary price reductions.~~

(19) ~~(20)~~ A common carrier that carries or transports alcoholic liquor into this state to a person in this state shall submit quarterly reports to the commission. A report required under this subsection must include all of the following about each delivery to a consumer in this state during the preceding calendar quarter:

(a) The name and business address of the person that ships alcoholic liquor.

(b) The name and address of the recipient of alcoholic liquor.

(c) The weight of alcoholic liquor delivered to a consignee.

(d) The date of the delivery.

(20) ~~(21)~~ A common carrier described in subsection ~~(20)~~ **(19)** shall maintain the books, records, and documents supporting a report submitted under subsection ~~(20)~~ **(19)** for 3 years unless the



1 commission notifies the common carrier in writing that the books,
2 records, and supporting documents may be destroyed. Within 30 days
3 after the commission's request, the common carrier shall make the
4 books, records, and documents available for inspection during
5 normal business hours. Within 30 days after a local law enforcement
6 agency's or local governmental unit's request, the common carrier
7 shall also make the books, records, and documents available for
8 inspection to a local law enforcement agency or local governmental
9 unit where the carrier resides or does business.

10 (21) ~~(22)~~ A third party facilitator service that delivers
11 beer, wine, or spirits to a consumer under subsection (15) or (16),
12 as applicable, shall submit quarterly reports to the commission. A
13 report required under this subsection must include all of the
14 following about each delivery to a consumer in this state during
15 the preceding calendar quarter:

16 (a) The name and business address of the person that ships
17 beer, wine, or spirits.

18 (b) The name and address of the recipient of beer, wine, or
19 spirits.

20 (c) The weight of beer, wine, or spirits delivered to a
21 consignee.

22 (d) The date of the delivery.

23 (22) ~~(23)~~ A third party facilitator service shall maintain the
24 books, records, and documents supporting a report submitted under
25 subsection ~~(22)~~ (21) for 3 years unless the commission notifies the
26 third party facilitator service in writing that the books, records,
27 and supporting documents may be destroyed. Within 30 days after the
28 commission's request, the third party facilitator service shall
29 make the books, records, and documents available for inspection



1 during normal business hours. Within 30 days after a local law
2 enforcement agency's or local governmental unit's request, the
3 third party facilitator service shall also make the books, records,
4 and documents available for inspection to a local law enforcement
5 agency or local governmental unit where the third party facilitator
6 service resides or does business.

7 (23) ~~(24)~~ A report submitted under subsection ~~(20)~~ (19) or
8 ~~(22)~~ (21) is subject to disclosure under the freedom of information
9 act, 1976 PA 442, MCL 15.231 to 15.246.

10 (24) ~~(25)~~ As used in this section:

11 (a) "Common carrier" means a company that transports goods, on
12 reasonable request, on regular routes and at set rates.

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

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

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

29 (e) "Computer system" means a set of related, connected or



1 unconnected, computer equipment, devices, software, or hardware.

2 (f) "Consumer" means an individual who purchases beer, wine,
3 or spirits for personal consumption and not for resale.

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

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

14 (i) "Direct shipper" means a person who sells, delivers, or
15 imports wine, to consumers in this state, that he or she produces
16 and bottles or wine that is manufactured by a wine maker for
17 another wine maker and that is transacted or caused to be
18 transacted through the use of any mail order, internet, telephone,
19 computer, device, or other electronic means, or sells directly to
20 consumers on the winery premises.

21 (j) "Facilitate" means, subject to subdivision (k),
22 advertising on behalf of a retailer, by means of the internet or
23 mobile application, and pursuant to a written or oral agreement,
24 the brands and prices of beer, wine, or spirits products sold by a
25 retailer and 1 or more of the following:

26 (i) Assisting the retailer, in any manner, in the arrangement
27 of delivery as allowed in this section.

28 (ii) Assisting the retailer, in any manner, in the processing
29 of payment by the consumer for the beer, wine, or spirits.



(iii) Transmitting customer information to the retailer.

(iv) Assisting the retailer by providing customer service.

(v) If the retailer maintains supervision and control over the day-to-day operation of its business, providing other normal and customary operational services.

(k) "Facilitate" does not include web designing, operating an internet search engine, or publishing an internet version of a newspaper.

(l) ~~(j)~~—"Identification verification service" means an internet-based service approved by the commission specializing in age and identity verification.

(m) ~~(k)~~—"Mobile application" means a specialized software program downloaded onto a wireless communication device.

~~(l) "Qualified micro brewer" means a micro brewer that produces in total less than 1,000 barrels of beer per year. In determining the 1,000-barrel threshold, all brands and labels of a micro brewer, whether brewed in this state or outside this state, must be combined.~~

(n) ~~(m)~~—"Third party facilitator service" means a person licensed by the commission to do any of the following:

(i) Facilitate the sale of beer or wine to a consumer as provided in subsection (15) on behalf of a retailer that holds a specially designated merchant license located in this state.

(ii) Facilitate the sale of spirits to a consumer as provided in subsection (16) on behalf of a retailer that holds a specially designated distributor license located in this state.

(iii) Deliver beer or wine to a consumer as provided in subsection (15) on behalf of a retailer that holds a specially designated merchant license located in this state.



1 (iv) Deliver spirits to a consumer as provided in subsection
2 (16) on behalf of a retailer that holds a specially designated
3 distributor license located in this state.

4 Enacting section 1. This amendatory act does not take effect
5 unless all of the following bills of the of the 100th Legislature
6 are enacted into law:

7 (a) House Bill No. 5341.

8 (b) House Bill No. 5343.

9 (c) House Bill No. 5344.

10 (d) House Bill No. 5345.

11 (e) House Bill No. 5346.

12 (f) House Bill No. 5347.

13 (g) House Bill No. 5348.

14 (h) House Bill No. 5349.

15 (i) House Bill No. 5350.

16 (j) House Bill No. 5351.

17 (k) House Bill No. 5352.

18 (l) House Bill No. 5353.

19 (m) House Bill No. 5354.

20 (n) House Bill No. 5355.

21 (o) House Bill No. 5400.

