

**STATE OF MICHIGAN
100TH LEGISLATURE
REGULAR SESSION OF 2020**

Introduced by Senators Schmidt, Moss and VanderWall

ENROLLED SENATE BILL No. 1138

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 prohibit the use of certain devices for the dispensing of alcoholic vapor; 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 2020 PA 106.

The People of the State of Michigan enact:

Sec. 203. (1) Except as provided in this section and section 301, a person shall not sell, deliver, or import alcoholic liquor, including alcoholic liquor for personal use, 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) 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 qualified retailer that holds a specially designated merchant license located in this state may use a common carrier to deliver beer and wine to a consumer in this state. A qualified retailer

that holds a specially designated distributor license located in this state may use a common carrier to deliver spirits to a consumer in this state. A qualified retailer that uses a common carrier to deliver beer, wine, or spirits 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 qualified 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 obtaining from him or her a copy of a photo identification issued by this state, another state, or the federal government or by using an identification verification service. The person receiving and accepting the order on behalf of the qualified retailer shall record the name, address, date of birth, and telephone number of the 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.

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

(e) 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 shall provide identification verifying his or her age and sign for the delivery.

(f) 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 different from the name of the individual placing the order.

(g) For a qualified retailer that has been issued licenses at 2 or more locations, the shipment of the wine must be fulfilled from the location nearest to the consumer unless that location does not have the wine ordered in stock.

(4) For purposes of subsection (1), a direct shipper may sell, deliver, or import wine other than wine as defined in section 113(9)(b) or 113a(9)(b) to consumers in this state by means of any mail order, internet, telephone, computer, device, or other electronic means, or sell directly to a consumer on the winery premises. A direct shipper that sells, delivers, or imports wine to a consumer under this subsection 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. On the request of the department of treasury, a direct shipper shall furnish an affidavit to verify payment.

(c) Comply with all laws of this state, including, but not limited to, the prohibition on 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 using 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 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) On 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 shall provide photo identification verifying his or her age and sign for the delivery.

(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 different from the name of the individual placing the order. The direct shipper must have received a registration number of approval from the commission for any wine imported into this state. However, the registration number of approval from the commission is not required to be on the invoice or on the label of the wine that the direct shipper sells, delivers, or imports to a consumer in this state.

(h) Direct ship not more than 1,500 9-liter cases, or 13,500 liters in total, of wine in a calendar year to consumers in this state. 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.

(l) For a direct shipper that is a wine manufacturer as described in subsection (10)(b), direct ship only the wine that the wine manufacturer has manufactured and registered with the commission, wine purchased from another wine manufacturer and further manufactured or bottled and registered with the commission, or shiners purchased from another manufacturer in compliance with section 204a and registered with the commission.

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

(6) A person that delivers the wine for a direct shipper under this section shall verify that the individual accepting delivery is 21 years of age or older and is the individual who placed the order or the designated recipient, is an individual 21 years of age or older 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 21 years of age or older, the delivery person shall return the wine to the direct shipper. A delivery person who returns wine to the direct shipper because the purchaser or designated recipient is not 21 years of age or older is not liable for any damages suffered by the purchaser or direct shipper.

(7) Except as provided in subsection (20), all spirits for sale, use, storage, or distribution in this state must originally be purchased by and imported into the state by the commission, or by prior written authority of the commission.

(8) This section does not apply to alcoholic liquor brought into this state for personal or household use in an amount permitted by federal law by an individual 21 years of age or older at the time of reentry into this state from outside the territorial limits of the United States if the individual 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.

(9) An individual 21 years of age or older 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 individual's personal use, notwithstanding subsection (1).

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

(10) A direct shipper shall not sell, deliver, or import wine as defined in section 113(9)(a) or 113a(9)(a) 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 manufacturer, if done in compliance with this act. Only the following persons qualify for the issuance of a direct shipper license:

(a) A wine maker that does not hold a license in another state that is the substantial equivalent to a retailer license.

(b) A wine manufacturer that is located inside this country but outside of this state and that holds both a federal basic permit issued by the Alcohol and Tobacco Tax and Trade Bureau of the United States Department of Treasury and a license to manufacture wine in its state of domicile.

(11) 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 initial application must be accompanied by a copy or other verifiable 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 or holding the substantial equivalent of a retail license not including a direct shipper license in a state outside its state of domicile is grounds for revocation or denial of a 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.

(12) A retailer that holds a specially designated merchant license, a brewpub, a micro brewer, or an out-of-state entity that is the substantial equivalent of a brewpub or 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:

- (a) The beer or wine, or both, is delivered by the retailer's, brewpub's, or micro brewer's employee.
- (b) The retailer, brewpub, or micro brewer or its employee who delivers the beer or wine, or both, verifies that the individual accepting delivery is at least 21 years of age.
- (c) If the retailer, brewpub, or micro brewer or its employee intends to provide service to consumers, the retailer, brewpub, or micro brewer or its employee providing the service has successfully completed a server training program as provided for in section 906.

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

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

- (a) The spirits are delivered by the retailer's employee.
- (b) The retailer or its employee who delivers the spirits verifies that the individual accepting delivery is at least 21 years of age.
- (c) If the retailer or its employee intends to provide service to consumers, the retailer or its employee providing the service has successfully completed a server training program as provided for in section 906.

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

- (a) If the third party facilitator service delivers beer or wine under this subsection, the third party facilitator service verifies that the individual accepting the delivery of the beer or wine is at least 21 years of age.
- (b) A manufacturer, warehouser, wholesaler, outstate seller of beer, outstate seller of wine, or supplier of spirits does not have a direct or indirect interest in the third party facilitator service.
- (c) A manufacturer, warehouser, wholesaler, outstate seller of beer, outstate seller of wine, or supplier of spirits does not aid or assist the third party facilitator service by gift, loan of money or property of any description, or other valuable thing as defined in section 609, and the third party facilitator service does not accept the same.
- (d) The qualified retailer or consumer pays the fees associated with deliveries provided for under this subsection.
- (e) The third party facilitator service offers services for all brands available at the retail location.

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

- (a) If the third party facilitator service delivers spirits under this subsection, the third party facilitator service verifies that the individual accepting the delivery of the spirits is at least 21 years of age.
- (b) A manufacturer, warehouser, wholesaler, outstate seller of beer, outstate seller of wine, or supplier of spirits does not have a direct or indirect interest in the third party facilitator service.
- (c) A manufacturer, warehouser, wholesaler, outstate seller of beer, outstate seller of wine, or supplier of spirits does not aid or assist a third party facilitator service by gift, loan of money or property of any description, or other valuable thing as defined in section 609, and a third party facilitator service does not accept the same.
- (d) The qualified retailer or consumer pays the fees associated with deliveries provided for under this subsection.
- (e) The third party facilitator service offers services for all brands available at the retail location.

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

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

(19) 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 the alcoholic liquor.
- (b) The name and address of the recipient of the alcoholic liquor.
- (c) The weight of the alcoholic liquor delivered to a consignee.
- (d) The date of the delivery.

(20) For purposes of subsection (1), a qualified small distiller or an out-of-state entity that is the substantial equivalent of a qualified small distiller may sell and deliver spirits that it manufactured to a retailer licensed to purchase and sell spirits in this state if all of the following conditions are met:

(a) The spirits are sold and delivered by an employee of the qualified small distiller or an out-of-state entity that is the substantial equivalent of a qualified small distiller, not an agent, and are transported and delivered using a vehicle owned by the qualified small distiller or the out-of-state entity that is the substantial equivalent of a qualified small distiller.

(b) The qualified small distiller or an out-of-state entity that is the substantial equivalent of a qualified small distiller complies with all 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 spirits to retailers.
- (ii) Vehicles used to deliver spirits to retailers.
- (iii) Uniform pricing established by the commission under section 233.
- (iv) Labeling and registration of spirits under R 436.1829 of the Michigan Administrative Code.
- (v) Payment of taxes.
- (c) The spirits are not listed in the State of Michigan price book.

(21) A common carrier described in subsection (19) shall maintain the books, records, and documents supporting a report submitted under subsection (19) for 3 years unless the commission notifies the common carrier in writing that the books, records, and supporting documents may be destroyed. Within 30 days after the commission's request, the common carrier shall make the books, records, and documents available for inspection during normal business hours. Within 30 days after a local law enforcement agency's or local governmental unit's request, the common carrier shall also make the books, records, and documents available for inspection to a local law enforcement agency or local governmental unit where the carrier resides or does business.

(22) A third party facilitator service that delivers beer, wine, or spirits to a consumer under subsection (15) or (16), as applicable, 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 beer, wine, or spirits.
- (b) The name and address of the recipient of beer, wine, or spirits.
- (c) The weight of beer, wine, or spirits delivered to a consignee.
- (d) The date of the delivery.

(23) A third party facilitator service shall maintain the books, records, and documents supporting a report submitted under subsection (22) for 3 years unless the commission notifies the third party facilitator service in writing that the books, records, and supporting documents may be destroyed. Within 30 days after the commission's request, the third party facilitator service shall make the books, records, and documents available for inspection during normal business hours. Within 30 days after a local law enforcement agency's or local governmental unit's request, the third party facilitator service shall also make the books, records, and documents available for inspection to a local law enforcement agency or local governmental unit where the third party facilitator service resides or does business.

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

(25) As used in this section:

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

(b) “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.

(c) “Computer network” means the interconnection of hardwire or wireless communication lines with a computer through remote terminals, or a complex consisting of 2 or more interconnected computers.

(d) “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.

(e) “Computer system” means a set of related, connected or unconnected, computer equipment, devices, software, or hardware.

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

(g) “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.

(h) “Diligent inquiry” means a diligent good faith effort to determine the age of an individual, that 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 individual.

(i) “Direct shipper” means either of the following:

(i) A wine manufacturer that sells, delivers, or imports wine other than wine as defined in section 113(9)(b) or 113a(9)(b) it has manufactured, bottled, and registered with the commission, to consumers in this state or 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.

(ii) A wine manufacturer that purchases wine other than wine as defined in section 113(9)(b) or 113a(9)(b) from another wine manufacturer and further manufactures or bottles the wine or purchases shiners of wine other than wine as defined in section 113(9)(b) or 113a(9)(b) from another wine manufacturer in compliance with section 204a, registers the wine with the commission and sells the wine to consumers in this state 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.

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

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

(ii) Assisting the retailer, in any manner, in the processing 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) “Identification verification service” means an internet-based service approved by the commission specializing in age and identity verification.

(m) “Mobile application” means a specialized software program downloaded onto a wireless communication device.

(n) “Qualified retailer” means a retailer licensed to sell alcoholic liquor for consumption off the premises that complies with all of the following:

(i) The retailer maintains physical licensed premises that are open to the general public for face to face sales transactions of alcoholic liquor, packaged food, and other products to consumers.

(ii) At least 25% of the retailer’s annual gross sales of alcoholic liquor must be from face to face sales transactions with consumers on the premises described in subparagraph (i) unless the retailer’s physical licensed premises is less than 15,000 square feet in total.

(iii) The retailer holds and maintains either of the following for the premises described in subparagraph (i):

(A) A retail food establishment license issued under the food law, 2000 PA 92, MCL 289.1101 to 289.8111. As used in this sub-subparagraph, "retail food establishment" means that term as defined in section 1111 of the food law, 2000 PA 92, MCL 289.1111.

(B) An extended retail food establishment license issued under the food law, 2000 PA 92, MCL 289.1101 to 289.8111. As used in this sub-subparagraph, "extended retail food establishment" means that term as defined in section 1107 of the food law, 2000 PA 92, MCL 289.1107.

(c) "Qualified small distiller" means a small distiller, or an out-of-state entity that is the substantial equivalent of a small distiller, that sells under 3,000 gallons of spirits per calendar year to retailers located in this state or out-of-state entities that are the substantial equivalent of retailers. If a small distiller or an out-of-state entity that is the substantial equivalent of a qualified small distiller manufactures spirits at more than 1 location, the total number of gallons of spirits sold to retailers or out-of-state entities that are the substantial equivalent of retailers from all locations must be combined to determine the 3,000-gallon threshold.

(p) "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 qualified 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 qualified retailer that holds a specially designated distributor license located in this state.

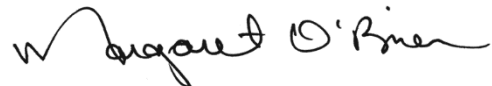
(iii) Deliver beer or wine to a consumer as provided in subsection (15) on behalf of a qualified retailer that holds a specially designated merchant license located in this state.

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

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

(a) Senate Bill No. 1139.

(b) Senate Bill No. 1140.



Secretary of the Senate



Clerk of the House of Representatives

Approved _____

Governor