

HOUSE BILL NO. 5342

January 16, 2020, Introduced by Reps. Wendzel, Hall, Garza and Cambensy 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 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



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1 commission's authorized agent or distributor, an authorized
2 distribution agent approved by order of the commission, a person
3 licensed by the commission, or by prior written order of the
4 commission.

5 (2) Notwithstanding R 436.1011(7)(b) and R 436.1527 of the
6 Michigan Administrative Code and except as provided in subsections
7 (3), (12), (13), (14), (15), and (16), a retailer shall not deliver
8 alcoholic liquor to a consumer in this state at the home or
9 business of the consumer or at any location away from the licensed
10 premises of the retailer. The purpose of this subsection is to
11 exercise this state's authority under section 2 of amendment XXI of
12 the constitution of the United States, to maintain the inherent
13 police powers to regulate the transportation and delivery of
14 alcoholic liquor, and to promote a transparent system for the
15 transportation and delivery of alcoholic liquor. The regulation
16 described in this subsection is considered necessary for both of
17 the following reasons:

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

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

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

28 (a) Pay any applicable taxes to the commission and pay any
29 applicable taxes to the department of treasury as directed by the



1 department of treasury. On the request of the department of
2 treasury, a retailer shall furnish an affidavit to verify payment.

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

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

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

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

22 (f) Place a label on the top panel of the shipping container
23 containing the name and address of the individual placing the order
24 and the name of the designated recipient if different from the name
25 of the individual placing the order.

26 (4) For purposes of subsection (1), a direct shipper may sell,
27 deliver, or import wine to consumers in this state by means of any
28 mail order, internet, telephone, computer, device, or other
29 electronic means, or sell directly to a consumer on the winery



1 premises. A direct shipper that sells, delivers, or imports wine to
2 a consumer under this subsection shall comply with all of the
3 following:

4 (a) Hold a direct shipper license.

5 (b) Pay any applicable taxes to the commission and pay any
6 applicable taxes to the department of treasury as directed by the
7 department of treasury. On the request of the department of
8 treasury, a direct shipper shall furnish an affidavit to verify
9 payment.

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

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

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

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

29 (g) Place a label on the top panel of the shipping container



1 containing the name and address of the individual placing the order
2 and the name of the designated recipient if different from the name
3 of the individual placing the order. The direct shipper must have
4 received a registration number of approval from the commission for
5 any wine imported into this state. However, the registration number
6 of approval from the commission is not required to be on the
7 invoice or on the label of the wine that the direct shipper sells,
8 delivers, or imports to a consumer in this state.

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

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

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

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

26 (5) For a delivery of wine through the use of a common carrier
27 under subsection (3), a person taking the order on behalf of the
28 retailer shall comply with subsection (3)(b) to (f). For a sale,
29 delivery, or importation of wine occurring by any means described



1 in subsection (4), a person taking the order on behalf of the
2 direct shipper shall comply with subsection (4)(c) to (g).

3 (6) A person that delivers the wine for a direct shipper under
4 this section shall verify that the individual accepting delivery is
5 21 years of age or older and is the individual who placed the order
6 or the designated recipient, is an individual 21 years of age or
7 older currently occupying or present at the address, or is an
8 individual otherwise authorized through a rule promulgated under
9 this act by the commission to receive alcoholic liquor under this
10 section. If the delivery person, after a diligent inquiry,
11 determines that the purchaser or designated recipient is not 21
12 years of age or older, the delivery person shall return the wine to
13 the direct shipper. A delivery person who returns wine to the
14 direct shipper because the purchaser or designated recipient is not
15 21 years of age or older is not liable for any damages suffered by
16 the purchaser or direct shipper.

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

21 (8) This section does not apply to alcoholic liquor brought
22 into this state for personal or household use in an amount
23 permitted by federal law by an individual 21 years of age or older
24 at the time of reentry into this state from ~~without~~ **outside** the
25 territorial limits of the United States if the individual has been
26 outside the territorial limits of the United States for more than
27 48 hours and has not brought alcoholic liquor into the United
28 States during the preceding 30 days.

29 (9) An individual 21 years of age or older may do either of



1 the following in relation to alcoholic liquor that contains less
2 than 21% alcohol by volume:

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

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

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

17 (a) A wine maker.

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

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



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

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

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

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

23 (c) If the retailer, brewpub, or micro brewer or its employee
24 intends to provide service to consumers, the retailer, brewpub, or
25 micro brewer or its employee providing the service has received
26 alcohol server training through a server training program approved
27 by the commission.

28 (13) A retailer that holds a specially designated merchant
29 license may use a third party that provides delivery service to



1 municipalities in this state that are surrounded by water and
2 inaccessible by motor vehicle to deliver beer and wine to the home
3 or other designated location of that consumer if the delivery
4 service is approved by the commission and agrees to verify that the
5 individual accepting delivery of the beer and wine is at least 21
6 years of age.

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

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

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

15 (c) If the retailer or its employee intends to provide service
16 to consumers, the retailer or its employee providing the service
17 has received alcohol server training through a server training
18 program approved by the commission.

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

29 (a) If the third party facilitator service delivers beer or



1 wine under this subsection, the third party facilitator service
2 verifies that the individual accepting the delivery of the beer or
3 wine is at least 21 years of age.

4 (b) A manufacturer, warehouser, wholesaler, outstate seller of
5 beer, outstate seller of wine, supplier of spirits, or outstate
6 seller of mixed spirit ~~drinks-drink~~ does not have a direct or
7 indirect interest in the third party facilitator service.

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

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

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

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

27 (a) If the third party facilitator service delivers spirits
28 under this subsection, the third party facilitator service verifies
29 that the individual accepting the delivery of the spirits is at



1 least 21 years of age.

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

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

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

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

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

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



1 retailer.

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

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

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

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

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

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

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

21 **(19)** ~~(20)~~ A common carrier that carries or transports
22 alcoholic liquor into this state to a person in this state shall
23 submit quarterly reports to the commission. A report required under
24 this subsection must include all of the following about each
25 delivery to a consumer in this state during the preceding calendar
26 quarter:

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

29 (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 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.

(21) ~~(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.

(22) ~~(23)~~—A third party facilitator service shall maintain the books, records, and documents supporting a report submitted under



1 subsection ~~(22)~~ **(21)** for 3 years unless the commission notifies the
2 third party facilitator service in writing that the books, records,
3 and supporting documents may be destroyed. Within 30 days after the
4 commission's request, the third party facilitator service shall
5 make the books, records, and documents available for inspection
6 during normal business hours. Within 30 days after a local law
7 enforcement agency's or local governmental unit's request, the
8 third party facilitator service shall also make the books, records,
9 and documents available for inspection to a local law enforcement
10 agency or local governmental unit where the third party facilitator
11 service resides or does business.

12 **(23)** ~~(24)~~ A report submitted under subsection ~~(20)~~ **(19)** or
13 ~~(22)~~ **(21)** is subject to disclosure under the freedom of information
14 act, 1976 PA 442, MCL 15.231 to 15.246.

15 **(24)** ~~(25)~~ As used in this section:

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

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

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

29 (d) "Computer program" means a series of internal or external



1 instructions communicated in a form acceptable to a computer that
2 directs the functioning of a computer, computer system, or computer
3 network in a manner designed to provide or produce products or
4 results from the computer, computer system, or computer network.

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

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

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

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

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

26 (j) "Facilitate" means, subject to subdivision (k),
27 advertising on behalf of a retailer, by means of the internet or
28 mobile application, and pursuant to a written or oral agreement,
29 the brands and prices of beer, wine, or spirits products sold by a



1 retailer and 1 or more of the following:

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

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

6 (iii) Transmitting customer information to the retailer.

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

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

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

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

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

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

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

28 (iii) Deliver beer or wine to a consumer as provided in
29 subsection (15) on behalf of a retailer that holds a specially



1 designated merchant license located in this state.

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

5 Enacting section 1. This amendatory act does not take effect
6 unless Senate Bill No. _____ or House Bill No. 5344 (request no.
7 04270'19 a) of the 100th Legislature is enacted into law.

