

HOUSE BILL No. 4036

January 21, 2015, Introduced by Rep. Forlini and referred to the Committee on Regulatory Reform.

A bill to amend 1998 PA 58, entitled "Michigan liquor control code of 1998," by amending sections 205 and 1027 (MCL 436.1205 and 436.2027), section 205 as amended by 2010 PA 213 and section 1027 as amended by 2011 PA 219.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 205. (1) The commission shall, as provided in section
2 203(1), by order appoint authorized distribution agents to ~~engage~~
3 ~~in the warehousing and delivery of~~ **WAREHOUSE AND DELIVER** spirits in
4 this state ~~so as to~~ ensure that all retail licensees ~~continue to be~~
5 **ARE** properly serviced with spirits. An authorized distribution
6 agent is subject to uniform requirements, including business
7 operating procedures, that the commission may prescribe by rule,
8 subject to this section.

9 (2) A person is eligible for appointment by the commission as

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 commission or its representatives, ~~upon~~ ON notice, any contract or
2 written agreement it ~~may have~~ HAS with a supplier of spirits or
3 other authorized distribution agent for the warehousing and
4 ~~delivery of~~ DELIVERING spirits in this state. AN AUTHORIZED
5 DISTRIBUTION AGENT SHALL MAINTAIN A DAILY RECORD OF SPIRITS
6 RECEIVED AND DELIVERED BY THE AUTHORIZED DISTRIBUTION AGENT. NO
7 LATER THAN THE FIFTEENTH DAY OF THE MONTH FOLLOWING THAT FOR WHICH
8 THE REPORT IS RENDERED, AN AUTHORIZED DISTRIBUTION AGENT SHALL, IN
9 A FORM AS PRESCRIBED BY THE COMMISSION, SUBMIT A MONTHLY REPORT TO
10 THE COMMISSION THAT INCLUDES, AT A MINIMUM, ALL OF THE FOLLOWING
11 INFORMATION FOR THE IMMEDIATELY PRECEDING MONTH:

12 (A) THE TOTAL AMOUNT OF SPIRITS BEING STORED BY THE AUTHORIZED
13 DISTRIBUTION AGENT ON THE FIRST OF THE MONTH.

14 (B) THE TOTAL AMOUNT OF SPIRITS RECEIVED FROM A SUPPLIER OF
15 SPIRITS, INCLUDING THE PRODUCT NAME AND QUANTITY OF EACH RECEIVED.

16 (C) THE TOTAL AMOUNT OF SPIRITS DELIVERED TO RETAIL LICENSEES,
17 INCLUDING THE PRODUCT NAME AND QUANTITY OF EACH DELIVERED.

18 (D) THE TOTAL AMOUNT OF SPIRITS DELIVERED TO AN OUT-OF-STATE
19 ENTITY, INCLUDING THE PRODUCT NAME AND QUANTITY OF EACH DELIVERED.

20 (E) THE TOTAL AMOUNT OF SPIRITS LOST AND DISPOSED OF DUE TO
21 SPOILAGE OR BROKEN OR DAMAGED CONTAINERS OF SPIRITS WHILE IN
22 STORAGE OR TRANSIT.

23 (F) THE TOTAL AMOUNT OF SAMPLES AND ANY OTHER BOTTLE OR
24 CONTAINER OF SPIRITS PROVIDED TO INDUCE THE SALE OF THAT PRODUCT,
25 INCLUDING THE PRODUCT NAME AND QUANTITY OF EACH, AND TO WHOM THOSE
26 SAMPLES AND BOTTLES WERE PROVIDED. AS USED IN THIS SUBDIVISION,
27 "SAMPLE" MEANS ANY CONTAINER OF SPIRITS THAT BEARS THE WORD

1 "SAMPLE" AND THAT IS NOT MORE THAN 1 LITER OR 33.82 UNITED STATES
2 FLUID OUNCES. IF A PRODUCT IS NOT AVAILABLE IN A CONTAINER OF 1
3 LITER OR LESS, THEN THE NEXT LARGER SIZE MAY BE SUBSTITUTED.
4 HOWEVER, A CONTAINER SHALL NOT BE MORE THAN 3 LITERS.

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

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

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

1 ~~least the following actions:~~

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

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

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

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

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

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

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

14 Sec. 1027. (1) Unless otherwise provided by rule of the
15 commission, a person shall not conduct samplings or tastings of any
16 alcoholic liquor for a commercial purpose except at premises that
17 are licensed by the commission for the sale and consumption of
18 alcoholic liquor on the premises.

19 (2) Notwithstanding section 1025(1) or (2), a retailer
20 licensed by the commission for consumption on the premises may
21 allow customers to sample beer, wine, and spirits if the retailer
22 does not charge for the samples provided to customers. Sample
23 serving sizes ~~shall~~ **MUST** not exceed 3 ounces for beer, 2 ounces for
24 wine, and 1/2 ounce for spirits. A customer shall not be provided
25 more than 2 samples within a 24-hour period per licensed premises.

26 (3) This section does not prohibit any of the following:

27 (a) A vendor of spirits, brewer, wine maker, mixed spirit

1 drink manufacturer, small wine maker, outstate seller of beer,
2 outstate seller of wine, or outstate seller of mixed spirit drink,
3 or a bona fide market research organization retained by 1 of the
4 persons named in this subsection, from conducting samplings or
5 tastings of an alcoholic liquor product before it is approved for
6 sale in this state if the sampling or tasting is conducted pursuant
7 ~~to~~ **UNDER** prior written approval of the commission.

8 (b) An on-premises licensee from giving a sampling or tasting
9 of alcoholic liquor to an employee of the licensee during the legal
10 hours for consumption for the purpose of educating the employee
11 regarding 1 or more types of alcoholic liquor if the employee is at
12 least 21 years of age.

13 (c) A small distiller licensee from giving a sampling or
14 tasting of brands it manufactures on the licensed premises or an
15 off-site tasting facility operated by that small distiller.

16 (d) A micro brewer, brewpub, or on-premises licensee from
17 allowing the sampling and consumption on the licensed premises of
18 beer, wine, mead, honey-based beer, or cider produced by 1 or more
19 home brewers at a meeting of home brewers, or a club composed
20 primarily of home brewers, under the following circumstances:

21 (i) The sampling or consumption is for the purpose of
22 exhibitions or competitions involving home brewers.

23 (ii) The beer, honey-based beer, or cider is served in portions
24 that do not exceed 3 ounces. The wine or mead is served in portions
25 that do not exceed 2 ounces.

26 (iii) The beer, wine, mead, honey-based beer, or cider produced
27 by the home brewer is only consumed by the home brewer, the home

1 brewer's family, a club member, a judge, or a guest speaker and is
2 not sold to members of the general public.

3 (iv) The participants in the sampling or consumption otherwise
4 comply with applicable state and federal law and applicable
5 regulatory provisions of this act and rules adopted by the
6 commission under this act.

7 (v) The participants in the sampling or consumption are not
8 charged for the sampling or consumption of the beer, wine, mead,
9 honey-based beer, or cider.

10 (4) A vendor of spirits or a manufacturer may conduct a
11 consumer sampling event on the premises of a holder of a specially
12 designated distributor license upon submission of a completed
13 application to the commission.

14 (5) The holder of a consumer sampling event license shall
15 comply with the following:

16 (a) The commission must be notified in writing a minimum of 10
17 working days before the event with the date, time, and location of
18 the event.

19 (b) The consumer sampling event is limited to 3 events per
20 vendor of spirits or manufacturer per specially designated
21 distributor license per month.

22 (c) The vendor of spirits or manufacturer conducting the
23 consumer sampling event must have a licensed representative present
24 at the specially designated distributor's establishment.

25 (d) Licensed representatives or an authorized representative
26 may distribute merchandise, not to exceed \$100.00 in value, to
27 consumers 21 years of age or older during the event.

1 (e) Participating specially designated distributor licensees
2 do not receive any fee or other valuable consideration for
3 participating in the event.

4 (f) Each consumer is limited to 3 samples, which total no more
5 than 1/3 ounce of spirits per serving.

6 (g) The consumer is not charged for and does not purchase any
7 sample.

8 (h) The alcoholic liquor used in the consumer sampling event
9 is provided by the vendor of spirits or manufacturer, and purchased
10 at the minimum retail selling price fixed by the commission from
11 the specially designated distributor on whose premises the event is
12 located. The vendor of spirits or manufacturer shall remove any
13 unfinished product from the premises at which the event is held
14 upon completion of the event.

15 (i) A consumer sampling event shall not be allowed if the sale
16 of alcoholic liquor is otherwise prohibited on the premises at
17 which the event is conducted.

18 (j) Samples are not to be offered to, or allowed to be
19 consumed by, any person under the legal age for consuming alcoholic
20 liquor.

21 (k) A consumer sampling event may be advertised in any type of
22 media and the advertisements may include the date, time, location,
23 and other information regarding the event.

24 (l) The participating vendor of spirits or manufacturer and
25 specially designated distributor licensees must comply with this
26 act and commission rules.

27 (m) The vendor of spirits or manufacturer must demonstrate

1 that the individual actually conducting the sampling has
2 successfully completed the server training program in the manner
3 provided for in section 906 and rules promulgated by the
4 commission.

5 (6) Violation of this section subjects the vendor of spirits
6 or manufacturer to the sanctions and penalties as provided for
7 under this act.

8 (7) The commission, by rule or issuance of an order, may
9 further define eligibility for licensure and processes for
10 conducting consumer sampling events.

11 (8) A sampling or tasting of any alcoholic liquor in a home or
12 domicile for other than a commercial purpose is not subject to this
13 section.

14 (9) Before a micro brewer, brewpub, or on-premises licensee
15 allows an event to be held under subsection (3)(d), the micro
16 brewer, brewpub, or on-premises licensee shall enter into a written
17 agreement with the home brewers or home brewers club stating all of
18 the following:

19 (a) The date and time the event will be held.

20 (b) The location of the event.

21 (c) Either of the following:

22 (i) A statement that the micro brewer, brewpub, or on-premises
23 licensee acknowledges that it is not in control of an unregulated
24 alcoholic beverage at its establishment and agrees to assume
25 liability under section 801(3) for the event.

26 (ii) Proof that the home brewers or home brewers club has
27 obtained a bond or liability insurance equal to that required under

1 section 803(1).

2 (10) A VENDOR REPRESENTATIVE OR SALESPERSON THAT PROVIDES A
3 RETAIL LICENSEE WITH A SAMPLE BOTTLE OF SPIRITS OR ANY OTHER BOTTLE
4 OR CONTAINER OF SPIRITS FOR THE RETAIL LICENSEE'S PERSONAL SAMPLING
5 IS RESPONSIBLE FOR THE PAYMENT OF THE SPECIFIC TAXES LEVIED AND
6 IMPOSED UNDER CHAPTER 12 AND SHALL REMIT PAYMENT OF THE TAXES AT
7 THE TIME HE OR SHE TAKES POSSESSION OF ANY SAMPLE OR OTHER BOTTLE
8 OR CONTAINER OF SPIRITS.

9 (11) ~~(10)~~—As used in this section:

10 (A) "BROKER" MEANS A PERSON, OTHER THAN AN INDIVIDUAL, WHO IS
11 LICENSED BY THE COMMISSION AND WHO IS EMPLOYED OR OTHERWISE
12 RETAINED BY A MANUFACTURER OF SPIRITS OR A VENDOR OF SPIRITS TO
13 SELL, PROMOTE, OR OTHERWISE ASSIST IN THE SALE OR PROMOTION OF
14 SPIRITS.

15 (B) ~~(a)~~—"Commercial purpose" means a purpose for which
16 monetary gain or other remuneration could reasonably be expected.

17 (C) ~~(b)~~—"Home brewer" means an individual who manufactures
18 beer, wine, mead, honey-based beer, or cider at his or her
19 dwelling.

20 (D) "SALESPERSON" MEANS A PERSON WHO IS EMPLOYED BY A VENDOR
21 OF SPIRITS OR BROKER AND WHO IS LICENSED BY THE COMMISSION TO SELL,
22 DELIVER, OR PROMOTE, OR OTHERWISE ASSIST IN THE SALE OF, SPIRITS IN
23 THIS STATE.

24 (E) "SAMPLE" MEANS ANY CONTAINER OF SPIRITS THAT BEARS THE
25 WORD "SAMPLE" AND THAT IS NOT MORE THAN 1 LITER OR 33.82 UNITED
26 STATES FLUID OUNCES. IF A PRODUCT IS NOT AVAILABLE IN A CONTAINER
27 OF 1 LITER OR LESS, THEN THE NEXT LARGER SIZE MAY BE SUBSTITUTED.

1 HOWEVER, A CONTAINER SHALL NOT BE MORE THAN 3 LITERS.

2 (F) "VENDOR REPRESENTATIVE" MEANS A PERSON WHO IS LICENSED BY
3 THE COMMISSION AND WHO IS AUTHORIZED BY A VENDOR OF SPIRITS TO
4 REPRESENT THE RESPECTIVE EMPLOYER OR PRINCIPAL IN TRANSACTIONS WITH
5 THE COMMISSION.