

HOUSE BILL No. 4125

February 3, 2015, Introduced by Rep. Yonker 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 2014 PA 50.

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~~
10 ~~Michigan administrative code and except as provided in subsection~~
11 ~~(11), a retailer shall not deliver alcoholic liquor to a consumer~~

~~1 in this state at the home or business of the consumer or at any
2 location away from the licensed premises of the retailer. The
3 purpose of this subsection is to exercise the state of Michigan's
4 authority under section 2 of amendment XXI of the constitution of
5 the United States, to maintain the inherent police powers to
6 regulate the transportation and delivery of alcoholic liquor, and
7 to promote a transparent system for the transportation and delivery
8 of alcoholic liquor. The regulation described in this subsection is
9 considered necessary for both of the following reasons:~~

~~10 — (a) To promote the public health, safety, and welfare.~~

~~11 — (b) To maintain strong, stable, and effective regulation by
12 having beer and wine sold by retailers to consumers in this state
13 by passing through the 3 tier distribution system established under
14 this act.~~

15 (2) FOR PURPOSES OF SUBSECTION (1), A RETAILER OR AN OUT-OF-
16 STATE RETAILER THAT HOLDS ITS STATE'S SUBSTANTIAL EQUIVALENT
17 LICENSE MAY SELL, DELIVER, OR IMPORT WINE TO CONSUMERS IN THIS
18 STATE BY MEANS OF ANY MAIL ORDER, INTERNET, TELEPHONE, COMPUTER,
19 DEVICE, OR OTHER ELECTRONIC MEANS. A RETAILER OR AN OUT-OF-STATE
20 RETAILER THAT HOLDS ITS STATE'S SUBSTANTIAL EQUIVALENT LICENSE THAT
21 SELLS, DELIVERS, OR IMPORTS WINE TO A CONSUMER UNDER THIS
22 SUBSECTION SHALL COMPLY WITH ALL OF THE FOLLOWING:

23 (A) PAY ANY APPLICABLE TAXES TO THE COMMISSION AND PAY ANY
24 APPLICABLE TAXES TO THE DEPARTMENT OF TREASURY AS DIRECTED BY THE
25 DEPARTMENT OF TREASURY. ON THE REQUEST OF THE DEPARTMENT OF
26 TREASURY, A RETAILER OR AN OUT-OF STATE RETAILER THAT HOLDS ITS
27 STATE'S SUBSTANTIAL EQUIVALENT LICENSE SHALL FURNISH AN AFFIDAVIT

1 TO VERIFY PAYMENT.

2 (B) COMPLY WITH ALL PROHIBITIONS OF THE LAWS OF THIS STATE,
3 INCLUDING, BUT NOT LIMITED TO, SALES TO MINORS.

4 (C) VERIFY THE AGE OF THE INDIVIDUAL PLACING THE ORDER BY
5 OBTAINING FROM HIM OR HER AN AFFIRMATION THAT HE OR SHE IS AT LEAST
6 21 YEARS OF AGE. THE PERSON RECEIVING AND ACCEPTING THE ORDER ON
7 BEHALF OF THE RETAILER OR THE OUT-OF-STATE RETAILER THAT HOLDS ITS
8 STATE'S SUBSTANTIAL EQUIVALENT LICENSE SHALL RECORD THE NAME,
9 ADDRESS, DATE OF BIRTH, AND TELEPHONE NUMBER OF THE INDIVIDUAL
10 PLACING THE ORDER ON THE ORDER FORM OR OTHER VERIFIABLE RECORD OF A
11 TYPE AND GENERATED IN A MANNER APPROVED BY THE COMMISSION AND
12 PROVIDE A DUPLICATE TO THE COMMISSION.

13 (D) ON REQUEST OF THE COMMISSION, MAKE AVAILABLE TO THE
14 COMMISSION ANY DOCUMENT USED TO VERIFY THE AGE OF THE INDIVIDUAL
15 ORDERING OR RECEIVING THE WINE FROM THE RETAILER OR OUT-OF-STATE
16 RETAILER THAT HOLDS ITS STATE'S SUBSTANTIAL EQUIVALENT LICENSE.

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 (3) For purposes of subsection (1), a direct shipper may sell,
27 deliver, or import wine —to consumers in this state by means of

1 any mail order, ~~internet,~~ **INTERNET** telephone, computer, device, or
2 other electronic means, or sell directly to a consumer on the
3 winery premises. A direct shipper that sells, delivers, or imports
4 wine to a consumer under this subsection shall comply with all of
5 the following:

6 (a) Hold a direct shipper license.

7 (b) Pay any applicable taxes to the commission and pay any
8 applicable taxes to the department of treasury as directed by the
9 department of treasury. ~~Upon~~ **ON** the request of the department of
10 treasury, a direct shipper shall furnish an affidavit to verify
11 payment.

12 (c) Comply with all prohibitions of the laws of this state,
13 including, but not limited to, sales to minors.

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

23 (e) ~~Upon~~ **ON** request of the commission, make available to the
24 commission any document used to verify the age of the individual
25 ordering or receiving the wine from the direct shipper.

26 (f) Stamp, print, or label on the outside of the shipping
27 container that the package "Contains Alcohol. Must be delivered to

1 a person 21 years of age or older." The recipient at the time of
2 the delivery shall provide photo identification verifying his or
3 her age ~~along with a signature.~~ **AND SIGN FOR THE DELIVERY.**

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

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 (4) Notwithstanding subsection (2) OR (3), ~~in the case of~~ **FOR**
27 a sale, delivery, or importation of alcoholic liquor occurring by

1 any means described in subsection (2) OR (3), a person taking the
2 order on behalf of the **RETAILER, OUT-OF-STATE RETAILER THAT HOLDS**
3 **ITS STATE'S SUBSTANTIAL EQUIVALENT LICENSE, OR** direct shipper shall
4 comply with **SUBSECTION (2) (B) TO (F) AND** subsection (3)(c) ~~through~~
5 **TO (g), AS APPLICABLE.**

6 (5) A person that delivers the wine for a direct shipper under
7 this section shall verify that the individual accepting delivery is
8 21 years of age or older and is the individual who placed the order
9 or the designated recipient, is an individual 21 years of age or
10 older currently occupying or present at the address, or is an
11 individual otherwise authorized through a rule promulgated under
12 this act by the commission to receive alcoholic liquor under this
13 section. If the delivery person, after a diligent inquiry,
14 determines that the purchaser or designated recipient is not 21
15 years **OF** age or older, the delivery person shall return the wine to
16 the **RETAILER, OUT-OF-STATE RETAILER THAT HOLDS ITS STATE'S**
17 **SUBSTANTIAL EQUIVALENT LICENSE, OR** direct shipper. A delivery
18 person who returns wine to the **RETAILER, OUT-OF-STATE RETAILER THAT**
19 **HOLDS ITS STATE'S SUBSTANTIAL EQUIVALENT LICENSE, OR** direct shipper
20 because the purchaser or designated recipient is not 21 years of
21 age or older is not liable for any damages suffered by the
22 purchaser, **RETAILER, OUT-OF-STATE RETAILER THAT HOLDS ITS STATE'S**
23 **SUBSTANTIAL EQUIVALENT LICENSE,** or direct shipper.

24 (6) All spirits for sale, use, storage, or distribution in
25 this state ~~—~~shall originally be purchased by and imported into the
26 state by the commission, or by prior written authority of the
27 commission.

1 (7) This section does not apply to alcoholic liquor brought
2 into this state for personal or household use in an amount
3 permitted by federal law by an individual 21 years of age or older
4 at the time of reentry into this state from without the territorial
5 limits of the United States if the individual has been outside the
6 territorial limits of the United States for more than 48 hours and
7 has not brought alcoholic liquor into the United States during the
8 preceding 30 days.

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

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

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

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

26 (a) A wine maker.

27 (b) A wine producer and bottler located inside this country

1 but outside of this state holding both a federal basic permit
2 issued by the alcohol and tobacco tax and trade bureau and a
3 license to manufacture wine in its state of domicile.

4 (10) An applicant for a direct shipper license shall submit an
5 application to the commission in a written or electronic format
6 provided by the commission and accompanied by an application and
7 initial license fee of \$100.00. The application ~~shall~~ **MUST** be
8 accompanied by a copy or other evidence of the existing federal
9 basic permit or license, or both, held by the applicant. The direct
10 shipper may renew its license annually by submission of a license
11 renewal fee of \$100.00 and a completed renewal application. The
12 commission shall use the fees collected under this section to
13 conduct investigations and audits of direct shippers. The failure
14 to renew, or the revocation or suspension of, the applicant's
15 existing Michigan license, federal basic permit, or license to
16 manufacture wine in its state of domicile is grounds for revocation
17 or denial of the direct shipper license. If a direct shipper is
18 found guilty of violating this act or a rule promulgated by the
19 commission, the commission shall notify both the alcoholic liquor
20 control agency in the direct shipper's state of domicile and the
21 ~~alcohol and tobacco tax and trade bureau~~ **ALCOHOL AND TOBACCO TAX**
22 **AND TRADE BUREAU** of the United States ~~department of treasury~~
23 **DEPARTMENT OF TREASURY** of the violation.

24 (11) Except as otherwise provided under subsection (12), a
25 retailer that holds a specially designated merchant license in this
26 state; an out-of-state retailer that holds its state's substantial
27 equivalent license; or a brewpub, micro brewer, or an out-of-state

1 entity that is the substantial equivalent of a brewpub or micro
2 brewer may deliver beer and wine to the home or other designated
3 location of a consumer in this state if all of the following
4 conditions are met:

5 (a) The beer or wine, or both, is delivered by the retailer's,
6 brewpub's, or micro brewer's employee and not by an agent or by a
7 third party delivery service.

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

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

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

25 (13) For purposes of subsection (1), a qualified micro brewer
26 or an out-of-state entity that is the substantial equivalent of a
27 qualified micro brewer may sell and deliver beer to a retailer in

1 this state if all of the following conditions are met:

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

6 (b) The beer is sold and delivered by an employee of the
7 qualified micro brewer, not an agent, and is transported and
8 delivered utilizing a vehicle owned by the qualified micro brewer,
9 not by a third party delivery service.

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

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

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

17 (iii) Price schedules and temporary price reductions.

18 (14) As used in this section:

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

26 (b) "Computer network" means the interconnection of hardware
27 or wireless communication lines with a computer through remote

1 terminals, or a complex consisting of 2 or more interconnected
2 computers.

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

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

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

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

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

22 (h) "Direct shipper" means a person who sells, delivers, or
23 imports wine, to consumers in this state, that he or she produces
24 and bottles or wine that is manufactured by a wine maker for
25 another wine maker and that is transacted or caused to be
26 transacted through the use of any mail order, ~~internet,~~ **INTERNET**,
27 telephone, computer, device, or other electronic means, or sells

1 directly to consumers on the winery premises.

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

5 (j) "Qualified micro brewer" means a micro brewer that
6 produces in total less than 1,000 barrels of beer per year. In
7 determining the 1,000-barrel threshold, all brands and labels of a
8 micro brewer, whether brewed in this state or outside this state,
9 ~~shall~~**MUST** be combined.