

HOUSE BILL No. 4753

June 3, 1999, Introduced by Rep. Bisbee 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 205 (MCL 436.1205), as amended by 1998 PA
416.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 205. (1) If the commission privatizes any portion of
2 the system existing on ~~the effective date of the amendatory act~~
3 ~~that added this section~~ APRIL 4, 1998 under which spirits are
4 warehoused or distributed, the commission shall, as provided in
5 section 203(1), by order appoint authorized distribution agents
6 to engage in the warehousing and delivery of spirits in this
7 state so as to ensure that all retail licensees continue to be
8 properly serviced with spirits. An authorized distribution agent
9 is subject to uniform requirements, including business operating

1 procedures, which the commission may prescribe by rule, subject
2 to this section.

3 (2) A person is eligible for appointment by the commission
4 as an authorized distribution agent if the following circum-
5 stances exist:

6 (a) The person satisfies all applicable commission rules
7 prescribing qualifications for licensure promulgated under sec-
8 tion 215.

9 (b) The person has entered into a written agreement or con-
10 tract with a supplier of spirits for the purposes of warehousing
11 and delivering a brand or brands of spirits of that supplier of
12 spirits.

13 (c) The person has an adequate warehousing facility located
14 in this state for the storing of spirits from which all delivery
15 of spirits to retail licensees shall be made.

16 (3) An authorized distribution agent shall not have a direct
17 or indirect interest in a supplier of spirits or in a retailer.
18 A supplier of spirits or a retailer shall not have a direct or
19 indirect interest in an authorized distribution agent. An autho-
20 rized distribution agent shall not hold title to spirits. After
21 September 24, 1996, an authorized distribution agent or an appli-
22 cant to become an authorized distribution agent who directly or
23 indirectly becomes licensed subsequently as a wholesaler shall
24 not be appointed or authorized to sell or distribute a brand of
25 wine in an area for which a wholesaler has been assigned or
26 authorized to sell or distribute that brand under an agreement
27 required by this act. A wholesaler who directly or indirectly

1 becomes an authorized distribution agent shall not be appointed
2 or authorized to sell or distribute a brand of wine to a retailer
3 in an area for which another wholesaler has been assigned or
4 authorized to sell or distribute that brand under an agreement
5 required by this act, if the wholesaler was not selling or dis-
6 tributing that brand to retailers in that area on or before
7 September 24, 1996.

8 (4) An authorized distribution agent shall deliver to each
9 retailer located in its assigned distribution area on at least a
10 weekly basis if the order meets the minimum requirements. The
11 authorized distribution agent shall provide retailers access to a
12 computer application that includes the capability to determine
13 whether certain spirits are currently available for delivery.
14 The minimum requirements shall be set by the commission and shall
15 be a sufficient number of bottles to comprise not more than 2
16 cases. A retailer may pick up the product at the authorized dis-
17 tribution agent's warehouse. To avoid occasional emergency out-
18 ages of spirits, a retail licensee may make up to 12 special
19 emergency orders to an authorized distribution agent per calendar
20 year which order shall be made available to the retail licensee
21 within 18 hours of the placing of the order. A special emergency
22 order placed on Saturday or Sunday shall be made available to the
23 retail licensee before noon on the following Monday. An autho-
24 rized distribution agent may impose a fee of up to \$20.00 to
25 deliver a special emergency order to a retail licensee.

26 (5) In locations inaccessible to a motor vehicle as that
27 term is defined by the Michigan vehicle code, 1949 PA 300, MCL

1 257.1 to 257.923, the authorized distribution agent shall arrange
2 that a delivery of spirits to a retailer be in compliance with
3 the following procedures:

4 (a) After processing an order from a retailer, an authorized
5 distribution agent shall contact a retailer to confirm the quan-
6 tity of cases or bottles, or both, and the exact dollar total of
7 the order.

8 (b) The authorized distribution agent shall have the respon-
9 sibility to coordinate with the retailer the date and time a
10 driver is scheduled to deliver the order to a ferry transport
11 dock, shall arrange any ferry, drayage, or other appropriate
12 service, and shall pick up the retailer's payment at that time.

13 (c) The ferry transport company or company representing any
14 other form of conveyance shall take the retailer's payment to the
15 mainland dock and give that payment to the authorized distribu-
16 tion agent's driver.

17 (d) The ferry transport company or company representing any
18 other form of conveyance shall transport the order to the drayage
19 or other appropriate company at the island dock for immediate
20 delivery to the retailer.

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

23 (6) The authorized distribution agent is responsible for the
24 payment of all transportation and delivery charges imposed by the
25 ferry, drayage, or other conveyance company and is responsible
26 for all breakage and any shortages, whether attributable to the
27 ferry, drayage, or other conveyance company or any combination of

1 those companies, until the order is delivered to the retailer's
2 establishment. This subsection does not in any way prevent the
3 authorized distribution agent from seeking reimbursement or dam-
4 ages from any company conveying the authorized distribution
5 agent's product.

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

10 (8) An authorized distribution agent or prospective autho-
11 rized distribution agent shall maintain and make available to the
12 commission or its representatives, upon notice, any contract or
13 written agreement it may have with a supplier of spirits or other
14 authorized distribution agent for the warehousing and delivery of
15 spirits in this state.

16 (9) For any violation of this act, rules promulgated under
17 this act, or the terms of an order appointing an authorized dis-
18 tribution agent, an authorized distribution agent shall be
19 subject to the suspension, revocation, forfeiture, and penalty
20 provisions of sections 903(1) and 907 in the same manner in which
21 a licensee would be subject to those provisions. An authorized
22 distribution agent aggrieved by a penalty imposed by the commis-
23 sion may invoke the hearing and appeal procedures of section
24 903(2) and rules promulgated under that section.

25 (10) A specially designated distributor may sell to an
26 on-premises licensee up to 9 liters of spirits during any 1-month
27 period and an on-premises licensee may purchase, collectively

1 from specially designated distributors, up to that amount during
2 any 1-month period. Notwithstanding any other provision of this
3 act or rule promulgated under this act, a specially designated
4 distributor is only liable for knowingly violating this section.
5 Records verifying these purchases shall be maintained by the
6 on-premises licensee and be available to the commission upon
7 request. A RETAIL LICENSEE MAY ARRANGE FOR THE DELIVERY OF SPIR-
8 ITS TO A SPECIALLY DESIGNATED DISTRIBUTOR, AUTHORIZED IN WRITING
9 BY THE RETAIL LICENSEE, IF THE RETAIL LICENSEE IS NOT OPEN FOR
10 BUSINESS DURING THE NORMAL BUSINESS HOURS FOR DELIVERY.

11 (11) An authorized distribution agent shall demonstrate that
12 it has made a good faith effort to provide employment to those
13 former state employees who were terminated due to the privatiza-
14 tion of the liquor distribution system. A good faith effort is
15 demonstrated by the authorized distribution agent performing at
16 least the following actions:

17 (a) Seeking from the commission a list of names and resumes
18 of all such former state employees who have indicated a desire
19 for continued employment in the distribution of liquor in
20 Michigan.

21 (b) Providing a list of employment opportunities created by
22 the authorized distribution agent in the distribution of liquor
23 in Michigan to each individual whose name and resume is transmit-
24 ted from the commission.

25 (c) Providing an opportunity for application and interview
26 to any terminated state worker who indicates an interest in

1 pursuing a job opportunity with the authorized distribution
2 agent.

3 (d) Providing a priority in hiring for those individuals who
4 apply and interview under this process.

5 (12) Any former state employees terminated due to privatiza-
6 tion who have reason to believe that an authorized distribution
7 agent has not made a good faith effort to provide him or her with
8 employment opportunities as described in subsection (11) may file
9 a complaint with the commission who shall hear the complaint and
10 make a determination on its validity. If the commission deter-
11 mines that the complaint is valid, the violation may be treated
12 as a violation of this act and the authorized distribution agent
13 may be subject to the suspension, revocation, forfeiture, and
14 penalty provisions of sections 903(1) and 907.

15 (13) In addition to paying a vendor of spirits the acquisi-
16 tion price for purchasing spirits, the commission may pay a
17 vendor of spirits an additional amount of not less than \$4.50 and
18 not more than \$7.50 for each case of spirits purchased as an
19 offset to the costs being incurred by that vendor of spirits in
20 contracting with an authorized distribution agent for the ware-
21 housing and delivery of spirits to retailers. The payment
22 described in this subsection shall not be included in the cost of
23 purchasing spirits by the commission and shall not be subject to
24 the commission's markup, special taxes, or state sales tax. The
25 per-case offset established by this subsection may be increased
26 by the state administrative board each January to reflect
27 reasonable increases in the authorized distribution agent's cost

1 of warehousing and delivery. As used in this subsection, "case"
2 means a container holding twelve 750 ml bottles of spirits or
3 other containers containing spirits which are standard to the
4 industry.