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## BILL ANALYSIS



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Senate Bill 1088 (as enacted)  
Sponsor: Senator Peter MacGregor  
Senate Committee: Regulatory Reform  
House Committee: Commerce and Trade

**PUBLIC ACT 520 of 2016**

Date Completed: 5-22-17

**CONTENT**

The bill amended the Michigan Liquor Control Code to:

- Allow a retailer that holds a specially designated distributor (SDD) license to deliver spirits to the home or other designated location of a consumer in the State, if certain conditions are met.
- Allow a retailer that holds an SDD license located in Michigan to use a third party facilitator service by means of the internet or mobile application to facilitate the sale of spirits for delivery to the home or other designated location of a consumer.
- Allow a retailer that holds a specially designated merchant (SDM) license located in Michigan to use a third party facilitator service by means of the internet or mobile application to facilitate the sale of beer or wine for delivery to the home or other designated location of a consumer.
- Require a third party facilitator service to verify that the individual accepting delivery is at least 21 years old, and specify conditions that must be met for the use of a third party facilitator service.
- Require a third party facilitator service to obtain a license from the Liquor Control Commission, and allow the Commission to charge third party facilitator service application and license fees.
- Allow a retailer that holds an SDM license located in Michigan to use a common carrier to sell and deliver wine to a consumer in the State by mail order, telephone, or electronic means, if various conditions are met.
- Establish reporting requirements and record-keeping requirements for a common carrier that carries or transports alcoholic liquor into the State to a person in Michigan, and for a third party facilitator service that delivers beer, wine, or spirits to a consumer.
- Delete references to a retailer that holds an SDM license in this State or an out-of-State retailer that holds a license substantially equivalent in provisions that allow delivery of beer or wine to a consumer's home or other designated location, or delivery to municipalities surrounded by water.

The bill took effect on March 29, 2017.

(A specially designated distributor is a person engaged in a business licensed by the Commission to distribute spirits and mixed spirit drink in the original package for consumption off the licensed premises. A specially designated merchant license authorizes the sale of beer or wine, or both, for off-premises consumption.)

## SDD Delivery of Spirits

The bill allows a retailer that holds an SDD license to deliver spirits to the home or other designated location of a consumer in the State if all of the following conditions are met:

- The spirits are delivered by the retailer's employee.
- The retailer or its employee who delivers the spirits verifies that the individual accepting delivery is at least 21 years of age.
- The retailer or its employee providing the service has received alcohol server training through a server training program approved by the Commission, if the retailer or employee intends to provide service to consumers.

## Third Party Facilitator Service

Definition. The bill defines "third party facilitator service" as a person licensed by the Commission to do any of the following:

- Facilitate the sale of beer or wine to a consumer as provided in the bill on behalf of a retailer that holds an SDM license located in this State.
- Facilitate the sale of spirits to a consumer as provided in the bill on behalf of a retailer that holds an SDD license located in this State.
- Delivery beer or wine to a consumer as provided in the bill on behalf of a retailer that holds an SDM license located in this State.
- Delivery spirits to a consumer as provided in the bill on behalf of a retailer that holds an SDD license located in this State.

Internet or Mobile Application. The bill allows a retailer that holds an SDM license located in the State to 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 under this provision or as provided below (under "SDM Delivery of Beer or Wine"), and allows a third party facilitator service to deliver beer or wine to a consumer on the retailer's behalf.

The bill also allows a retailer that holds an SDD license located in the State to 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 under this provision or as provided above (under "SDD Delivery of Spirits"), and allows a third party facilitator service to do so.

In either case, all of the following conditions must be met:

- The third party facilitator service verifies that the individual accepting delivery of the beer or wine, or delivery of the spirits, is at least 21 years of age, if the service delivers beer or wine or delivers spirits under these provisions.
- A manufacturer, warehouse, wholesaler, outstate seller of beer or wine, supplier of spirits, or outstate seller of mixed spirit drinks does not have a direct or indirect interest in the third party facilitator service, and does not aid or assist a third party facilitator service by gift, loan of money or property of any description, or other valuable thing, and a service does not accept such aid or assistance.
- The retailer or consumer pays the fees associated with deliveries under these provisions.
- The third party facilitator service offers services for all brands available at the retail location.

The bill defines "mobile application" as a specialized software program downloaded onto a wireless communication device.

License & Fees. A third party facilitator may not deliver beer, wine, or spirits to a consumer, or facilitate the sale of beer, wine, or spirits, as described above, unless it applies for and is granted a third party facilitator license by the Commission. The Commission may charge a reasonable application fee, initial license fee, and annual license fee, and must establish a fee by a written order.

Violation. If a third party facilitator service used by a retailer that holds an SDM or SDD license violates these provisions, the Commission may not treat the violation as a violation by the retailer.

#### SDM Delivery of Beer or Wine

Under the bill, except as provided below (regarding delivery to municipalities surrounded by water), a retailer that holds an SDM license or a brewpub, a micro brewer, or an out-of-State entity that is substantially equivalent to a brewpub or micro brewer, may deliver beer and wine to the home or other designated location of a consumer in the State if several conditions are met. These include a requirement that the beer or wine, or both, is delivered by the retailer's, brewpub's, or micro brewer's employee.

Previously, this provision applied to a retailer that held an SDM license in this State and an out-of-State retailer that held its state's substantially equivalent license (as well as a brewpub or micro brewer, or a substantially equivalent out-of-State entity). Also, the bill deleted a requirement that the delivery not be by an agent or a third party delivery service

Under the bill, a retailer that holds an SDM license may use a third party that provides delivery service to municipalities in Michigan that are surrounded by water and inaccessible by motor vehicle, to deliver beer and wine to the home or other designated location of the consumer, if the service is approved by the Commission and agrees to verify that the individual accepting delivery is at least 21. Previously, this applied to retailer that held an SDM license in this State or an out-of-State retailer with a substantially equivalent license.

#### Use of Common Carrier to Deliver Wine

Subject to certain exceptions, the Code prohibits a person from selling, delivering, or importing alcoholic liquor, including liquor for personal use, in the State unless the sale, delivery, or importation is made by the Commission, its authorized agent or distributor, an authorized distribution agent approved by the Commission, or a person licensed by the Commission, or by prior written approval of the Commission.

Under the bill, for purposes of this provision, a retailer that holds an SDM license located in Michigan may use a common carrier to deliver wine to a consumer in the State. The retailer must comply with all of the requirements described below.

The retailer must pay any applicable taxes to the Commission and pay any applicable taxes to the Department of Treasury as directed by the Department. On request of the Department, the retailer must furnish an affidavit to verify payment.

The retailer must comply with all prohibitions of the laws of the State, including the prohibition against sales to minors.

The retailer must verify the age of the individual placing the order by obtaining from him or her a copy of a photo ID 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 retailer must 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 type and generated in a manner approved by the Commission, and give a copy to the Commission.

On request of the Commission, the retailer must make available to it any document used to verify the age of the individual ordering or receiving the wine from the retailer.

The retailer must 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". At the time of delivery, the recipient must provide identification verifying his or her age and sign for the delivery.

The retailer also must place on the top panel of the shipping container a label 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 bill defines "common carrier" as company that transports goods, on reasonable request, on regular routes and at set rates.

#### Direct Shipper Requirements

As noted above, the Code generally prohibits a person from selling, delivering, or importing alcoholic liquor in the State unless the sale, delivery, or importation is made by the Commission, its authorized agent or distributor, an authorized distribution agent approved by the Commission, or a person licensed by the Commission, or by prior written approval of the Commission.

For this purpose, the Code allows a direct shipper to sell, deliver, or import wine to consumers in the 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. The direct shipper must hold a direct shipper license, verify the age of the individual placing the order, and meet other requirements.

The requirements include placing a label on the top panel of the shipping container containing the direct shipper license number, the order number, the name and address of the individual placing the order, and the name of the designated recipient if different from the individual placing the order. The bill deletes the requirement that the label include the direct shipper license number and the order number.

The bill requires the direct shipper to have received a registration number of approval from the Commission for any wine imported into the State. This number, however, 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 the State.

(A direct shipper is a person who sells, delivers, or imports wine, to consumers in the State, that he or she produces and bottles or wine that is manufactured by a wine maker for another wine maker and 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.)

#### Reporting & Record-Keeping Requirements

Under the bill, a common carrier that carries or transports alcoholic liquor into the State to a person in Michigan, and a third party facilitator service that delivers beer, wine, or spirits to a consumer, as provided in the bill, must submit quarterly reports to the Commission. A report

must include all of the following about each delivery to a consumer in the State during the preceding calendar quarter:

- The name and business address of the person shipping alcoholic liquor, or the person shipping beer, wine, or spirits.
- The name and address of the recipient.
- The weight of alcoholic liquor, or the weight of the beer, wine, or spirits, delivered to a consignee.
- The date of the delivery.

In addition, a common carrier or third party facilitator service must maintain the books, records, and documents supporting a quarterly report for three years unless the Commission notifies the carrier or service in writing that they may be destroyed. Within 30 days after the Commission's request, the carrier or service must make the books, records, and documents available for inspection during normal business hours. Also, within 30 days after the request of a local law enforcement agency or local unit of government, the common carrier or third party delivery service must make the books, records, and documents available for inspection where it resides or does business.

A report submitted to the Commission under these provisions will be subject to disclosure under the Freedom of Information Act.

MCL 436.203

Legislative Analyst: Suzanne Lowe

### **FISCAL IMPACT**

The bill will have a neutral fiscal impact on the Michigan Liquor Control Commission (MLCC) and no fiscal impact on local units of government. The bill requires the MLCC to develop a licensing program for third party delivery services, and to establish fees for those seeking licensure as such. Since the bill allows the MLCC to charge fees for application, initial licensing, and license renewal, it seems reasonable to assume that the fees will be set at a level that allows the MLCC to recover its costs.

Fiscal Analyst: Josh Sefton

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.