



SENATE BILL No. 1088

September 20, 2016, Introduced by Senator MACGREGOR 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~~ **ADMINISTRATIVE CODE** and except as

1 provided in ~~subsection (11)~~, **SUBSECTIONS (3) AND (12)**, a retailer
2 shall not deliver alcoholic liquor to a consumer in this state at
3 the home or business of the consumer or at any location away from
4 the licensed premises of the retailer. The purpose of this
5 subsection is to exercise ~~the state of Michigan's~~ **THIS STATE'S**
6 authority under section 2 of amendment XXI of the constitution of
7 the United States, to maintain the inherent police powers to
8 regulate the transportation and delivery of alcoholic liquor, and
9 to promote a transparent system for the transportation and delivery
10 of alcoholic liquor. The regulation described in this subsection is
11 considered necessary for both of the following reasons:

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

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

17 **(3) FOR PURPOSES OF SUBSECTION (1), A RETAILER THAT HOLDS A**
18 **SPECIALLY DESIGNATED MERCHANT LICENSE LOCATED IN THIS STATE MAY USE**
19 **A COMMON CARRIER TO SELL AND DELIVER WINE TO A CONSUMER IN THIS**
20 **STATE BY MEANS OF ANY MAIL ORDER, INTERNET, TELEPHONE, COMPUTER,**
21 **DEVICE, OR OTHER ELECTRONIC MEANS. A RETAILER THAT USES A COMMON**
22 **CARRIER TO SELL AND DELIVER WINE TO A CONSUMER UNDER THIS**
23 **SUBSECTION SHALL COMPLY WITH ALL OF THE FOLLOWING:**

24 **(A) PAY ANY APPLICABLE TAXES TO THE COMMISSION AND PAY ANY**
25 **APPLICABLE TAXES TO THE DEPARTMENT OF TREASURY AS DIRECTED BY THE**
26 **DEPARTMENT OF TREASURY. ON THE REQUEST OF THE DEPARTMENT OF**
27 **TREASURY, A RETAILER SHALL FURNISH AN AFFIDAVIT TO VERIFY PAYMENT.**

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

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

11 (D) ON REQUEST OF THE COMMISSION, MAKE AVAILABLE TO THE
12 COMMISSION ANY DOCUMENT USED TO VERIFY THE AGE OF THE INDIVIDUAL
13 ORDERING OR RECEIVING THE WINE FROM THE RETAILER.

14 (E) STAMP, PRINT, OR LABEL ON THE OUTSIDE OF THE SHIPPING
15 CONTAINER THAT THE PACKAGE "CONTAINS ALCOHOL. MUST BE DELIVERED TO
16 A PERSON 21 YEARS OF AGE OR OLDER". THE RECIPIENT AT THE TIME OF
17 THE DELIVERY SHALL PROVIDE IDENTIFICATION VERIFYING HIS OR HER AGE
18 AND SIGN FOR THE DELIVERY.

19 (F) PLACE A LABEL ON THE TOP PANEL OF THE SHIPPING CONTAINER
20 CONTAINING THE NAME AND ADDRESS OF THE INDIVIDUAL PLACING THE ORDER
21 AND THE NAME OF THE DESIGNATED RECIPIENT IF DIFFERENT FROM THE NAME
22 OF THE INDIVIDUAL PLACING THE ORDER.

23 (4) ~~(3)~~—For purposes of subsection (1), a direct shipper may
24 sell, deliver, or import wine ~~—~~to consumers in this state by means
25 of any mail order, internet, telephone, computer, device, or other
26 electronic means, or sell directly to a consumer on the winery
27 premises. A direct shipper that sells, delivers, or imports wine to

1 a consumer under this subsection shall comply with all of the
2 following:

3 (a) Hold a direct shipper license.

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

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

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

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

23 (f) Stamp, print, or label on the outside of the shipping
24 container that the package "Contains Alcohol. Must be delivered to
25 a person 21 years of age or older." The recipient at the time of
26 the delivery shall provide photo identification verifying his or
27 her age ~~along with a signature.~~**AND SIGN FOR THE DELIVERY.**

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

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

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

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

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

23 (5) ~~(4) Notwithstanding subsection (3), in the case of~~ **FOR A**
24 **SALE OR DELIVERY OF ALCOHOLIC LIQUOR OCCURRING BY ANY MEANS**
25 **DESCRIBED IN SUBSECTION (3), A PERSON TAKING THE ORDER ON BEHALF OF**
26 **THE RETAILER SHALL COMPLY WITH SUBSECTION (3) (B) TO (F). FOR a**
27 sale, delivery, or importation of alcoholic liquor occurring by any

1 means described in subsection ~~(3)~~, **(4)**, a person taking the order
2 on behalf of the direct shipper shall comply with subsection ~~(3)(e)~~
3 ~~through~~ **(4)(C) TO** (g).

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

18 **(7)** ~~(6)~~—All spirits for sale, use, storage, or distribution in
19 this state ~~—~~shall originally be purchased by and imported into the
20 state by the commission, or by prior written authority of the
21 commission.

22 **(8)** ~~(7)~~—This section does not apply to alcoholic liquor
23 brought into this state for personal or household use in an amount
24 permitted by federal law by an individual 21 years of age or older
25 at the time of reentry into this state from without the territorial
26 limits of the United States if the individual has been outside the
27 territorial limits of the United States for more than 48 hours and

1 has not brought alcoholic liquor into the United States during the
2 preceding 30 days.

3 (9) ~~(8)~~—An individual 21 years of age or older may do either
4 of the following in relation to alcoholic liquor that contains less
5 than 21% alcohol by volume:

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

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

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

20 (a) A wine maker.

21 (b) A wine producer and bottler located inside this country
22 but outside of this state holding both a federal basic permit
23 issued by the ~~alcohol and tobacco tax and trade bureau~~ **ALCOHOL AND**
24 **TOBACCO TAX AND TRADE BUREAU OF THE UNITED STATES DEPARTMENT OF**
25 **TREASURY** and a license to manufacture wine in its state of
26 domicile.

27 (11) ~~(10)~~—An applicant for a direct shipper license shall

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

20 (12) ~~(11)~~ Except as otherwise provided under subsection ~~(12)~~,
21 **(13) OR (14)**, a retailer that holds a specially designated merchant
22 license, ~~in this state; an out-of-state retailer that holds its~~
23 ~~state's substantial equivalent license; or a brewpub, A~~ micro
24 brewer, or an out-of-state entity that is the substantial
25 equivalent of a brewpub or micro brewer may deliver beer and wine
26 to the home or other designated location of a consumer in this
27 state if all of the following conditions are met:

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

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

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

12 **(13)** ~~(12)~~ A retailer that holds a specially designated
13 merchant license ~~in this state or an out of state retailer that~~
14 ~~holds its state's substantial equivalent license~~ may utilize **USE** a
15 third party that provides delivery service to municipalities in
16 this state that are surrounded by water and inaccessible by motor
17 vehicle to deliver beer and wine to the home or other designated
18 location of that consumer if the delivery service is approved by
19 the commission and agrees to verify that the individual accepting
20 delivery of the beer and wine is at least 21 years of age.

21 **(14) A RETAILER THAT HOLDS A SPECIALLY DESIGNATED MERCHANT**
22 **LICENSE MAY USE A THIRD PARTY DELIVERY SERVICE BY MEANS OF THE**
23 **INTERNET OR A MOBILE APPLICATION TO FACILITATE THE SALE OF OR TO**
24 **DELIVER, OR BOTH, BEER OR WINE TO THE HOME OR DESIGNATED LOCATION**
25 **OF A CONSUMER IF ALL OF THE FOLLOWING CONDITIONS ARE MET:**

26 **(A) THE THIRD PARTY DELIVERY SERVICE VERIFIES THAT THE**
27 **INDIVIDUAL ACCEPTING DELIVERY OF THE BEER OR WINE IS AT LEAST 21**

1 YEARS OF AGE.

2 (B) A MANUFACTURER, WAREHOUSER, WHOLESALER, OUTSTATE SELLER OF
3 BEER, OR OUTSTATE SELLER OF WINE DOES NOT HAVE A DIRECT OR INDIRECT
4 INTEREST IN THE THIRD PARTY DELIVERY SERVICE.

5 (C) A MANUFACTURER, WAREHOUSER, WHOLESALER, OUTSTATE SELLER OF
6 BEER, OR OUTSTATE SELLER OF WINE DOES NOT AID OR ASSIST A THIRD
7 PARTY DELIVERY SERVICE BY GIFT, LOAN OF MONEY, PROPERTY, OR ANY
8 DESCRIPTION, OR OTHER VALUABLE THING AS DEFINED IN SECTION 609, AND
9 A THIRD PARTY DELIVERY SERVICE DOES NOT ACCEPT THE SAME.

10 (D) THE RETAILER OR CONSUMER PAYS THE FEES ASSOCIATED WITH
11 DELIVERIES PROVIDED FOR UNDER THIS SUBSECTION.

12 (E) THE THIRD PARTY DELIVERY SERVICE OFFERS SERVICES FOR ALL
13 BRANDS.

14 (F) THE THIRD PARTY DELIVERY SERVICE MAKES ITS SERVICES
15 REASONABLY AVAILABLE TO ANY RETAILER IN THE THIRD PARTY DELIVERY
16 SERVICE'S AREA.

17 (15) A THIRD PARTY DELIVERY SERVICE SHALL NOT DELIVER BEER OR
18 WINE TO A CONSUMER AS PROVIDED IN SUBSECTION (14) UNLESS IT APPLIES
19 FOR AND IS GRANTED A THIRD PARTY DELIVERY SERVICE LICENSE BY THE
20 COMMISSION. THE COMMISSION MAY CHARGE A REASONABLE APPLICATION FEE,
21 INITIAL LICENSE FEE, AND ANNUAL LICENSE RENEWAL FEE.

22 (16) ~~(13)~~ For purposes of subsection (1), a qualified micro
23 brewer or an out-of-state entity that is the substantial equivalent
24 of a qualified micro brewer may sell and deliver beer to a retailer
25 in this state if all of the following conditions are met:

26 (a) The retailer is not located in a sales territory for which
27 the qualified micro brewer has granted exclusive sales rights to a

1 wholesaler ~~pursuant to~~ **UNDER** sections 401 and 403 for the sale of
2 any brand or brands of beer produced by that micro brewer.

3 (b) The beer is sold and delivered by an employee of the
4 qualified micro brewer, not an agent, and is transported and
5 delivered ~~utilizing~~ **USING** a vehicle owned by the qualified micro
6 brewer, not by a third party delivery service.

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

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

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

14 (iii) Price schedules and temporary price reductions.

15 **(17) A COMMON CARRIER THAT CARRIES OR TRANSPORTS ALCOHOLIC**
16 **LIQUOR INTO THIS STATE TO A PERSON IN THIS STATE SHALL SUBMIT**
17 **QUARTERLY REPORTS TO THE COMMISSION. A REPORT REQUIRED UNDER THIS**
18 **SUBSECTION MUST INCLUDE ALL OF THE FOLLOWING ABOUT EACH DELIVERY TO**
19 **A CONSUMER IN THIS STATE DURING THE PRECEDING CALENDAR QUARTER:**

20 **(A) THE NAME AND BUSINESS ADDRESS OF THE PERSON THAT SHIPS**
21 **ALCOHOLIC LIQUOR.**

22 **(B) THE NAME AND ADDRESS OF THE RECIPIENT OF ALCOHOLIC LIQUOR.**

23 **(C) THE QUANTITY OF ALCOHOLIC LIQUOR DELIVERED TO A CONSIGNEE.**

24 **(D) THE DATE OF THE DELIVERY.**

25 **(18) A COMMON CARRIER DESCRIBED IN SUBSECTION (17) SHALL**
26 **MAINTAIN THE BOOKS, RECORDS, AND DOCUMENTS SUPPORTING A REPORT**
27 **SUBMITTED UNDER SUBSECTION (17) FOR 3 YEARS UNLESS THE COMMISSION**

1 NOTIFIES THE COMMON CARRIER IN WRITING THAT THE BOOKS, RECORDS, AND
2 SUPPORTING DOCUMENTS MAY BE DESTROYED. WITHIN 30 DAYS AFTER THE
3 COMMISSION'S REQUEST, THE COMMON CARRIER SHALL MAKE THE BOOKS,
4 RECORDS, AND DOCUMENTS AVAILABLE FOR INSPECTION DURING NORMAL
5 BUSINESS HOURS. WITHIN 30 DAYS AFTER A LOCAL LAW ENFORCEMENT
6 AGENCY'S OR LOCAL GOVERNMENTAL UNIT'S REQUEST, THE COMMON CARRIER
7 SHALL ALSO MAKE THE BOOKS, RECORDS, AND DOCUMENTS AVAILABLE FOR
8 INSPECTION TO A LOCAL LAW ENFORCEMENT AGENCY OR LOCAL GOVERNMENTAL
9 UNIT WHERE THE CARRIER RESIDES OR DOES BUSINESS.

10 (19) A REPORT SUBMITTED UNDER SUBSECTION (17) IS SUBJECT TO
11 DISCLOSURE UNDER THE FREEDOM OF INFORMATION ACT, 1976 PA 442, MCL
12 15.231 TO 15.246.

13 (20) ~~(14)~~As used in this section:

14 (A) "COMMON CARRIER" MEANS A PERSON THAT TRANSPORTS
15 INDIVIDUALS OR PROPERTY FOR A FEE.

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

23 (C) ~~(b)~~"Computer network" means the interconnection of
24 hardwire or wireless communication lines with a computer through
25 remote terminals, or a complex consisting of 2 or more
26 interconnected computers.

27 (D) ~~(e)~~"Computer program" means a series of internal or

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

6 (E) ~~(d)~~—"Computer system" means a set of related, connected or
7 unconnected, computer equipment, devices, software, or hardware.

8 (F) ~~(e)~~—"Consumer" means an individual who purchases **BEER OR**
9 wine for personal consumption and not for resale.

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

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

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

1 **(J)** ~~(i)~~—"Identification verification service" means any ~~any~~ **AN**
2 internet-based service approved by the commission specializing in
3 age and identity verification.

4 **(K) "MOBILE APPLICATION" MEANS A SPECIALIZED SOFTWARE PROGRAM**
5 **DOWNLOADED ONTO A WIRELESS COMMUNICATION DEVICE.**

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

11 **(M) "THIRD PARTY DELIVERY SERVICE" MEANS A PERSON LICENSED BY**
12 **THE COMMISSION THAT FACILITATES THE SALE OF OR DELIVERS, OR BOTH,**
13 **BEER OR WINE TO A CONSUMER AS PROVIDED IN SUBSECTION (14). A THIRD**
14 **PARTY DELIVERY SERVICE DOES NOT INCLUDE A COMMON CARRIER OR A THIRD**
15 **PARTY THAT PROVIDES DELIVERY SERVICE DESCRIBED IN SUBSECTION (13).**