

HOUSE BILL NO. 5268

December 04, 2019, Introduced by Reps. Farrington, Hoitenga and Hornberger 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 2015 PA 246.

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
3 warehouse and deliver spirits in this state to ensure that all
4 retail licensees are properly serviced with spirits. An authorized
5 distribution agent is subject to uniform requirements, including



1 business operating procedures, that the commission may prescribe by
2 rule, subject to this section.

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

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

9 (b) The person has entered into a written agreement or
10 contract with a supplier of spirits to warehouse and deliver a
11 brand or brands of spirits of that supplier of spirits.

12 (c) The person has an adequate warehousing facility located in
13 this state to store spirits from which all delivery of spirits to
14 retail licensees must be made.

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

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



1 shall set minimum requirements that must be a sufficient number of
2 bottles to comprise not more than 2 cases. A retailer may pick up
3 the product at the authorized distribution agent's warehouse. To
4 avoid occasional emergency outages of spirits, a retail licensee
5 may make up to 12 special emergency orders to an authorized
6 distribution agent in each calendar year. An authorized
7 distribution agent shall make a special emergency order available
8 to the retail licensee within 18 hours of the placing of the order.
9 An authorized distribution agent shall make a special emergency
10 order placed on Saturday or Sunday available to the retail licensee
11 before noon on the following Monday. An authorized distribution
12 agent may impose a fee of up to \$20.00 to deliver a special
13 emergency order to a retail licensee.

14 (5) In locations inaccessible to a motor vehicle as that term
15 is defined ~~by~~ **in section 33 of** the Michigan vehicle code, 1949 PA
16 300, ~~MCL 257.1 to 257.923, 257.33~~, an authorized distribution agent
17 shall arrange that a delivery of spirits to a retailer be in
18 compliance with the following procedures:

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

23 (b) The authorized distribution agent shall coordinate with
24 the retailer the date and time a driver is scheduled to deliver the
25 order to a ferry transport dock, shall arrange any ferry, drayage,
26 or other appropriate service, and shall pick up the retailer's
27 payment at that time.

28 (c) The ferry transport company or company representing any
29 other form of conveyance shall take the retailer's payment to the



1 mainland dock and give that payment to the authorized distribution
2 agent's driver.

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

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

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

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

22 (8) An authorized distribution agent or prospective authorized
23 distribution agent shall maintain and make available to the
24 commission or its representatives, on notice, any contract or
25 written agreement it has with a supplier of spirits or other
26 authorized distribution agent for the warehousing and delivering of
27 spirits in this state.

28 (9) For a violation of this act, a rule promulgated under this
29 act, or the terms of an order appointing an authorized distribution



1 agent, an authorized distribution agent is subject to the
 2 suspension, revocation, forfeiture, and penalty provisions of
 3 sections 903(1) and 907 in the same manner in which a licensee
 4 would be subject to those provisions. An authorized distribution
 5 agent aggrieved by a penalty imposed by the commission may invoke
 6 the hearing and appeal procedures of section 903(2) and rules
 7 promulgated under ~~that~~ section **903**.

8 (10) A specially designated distributor may sell to an on-
 9 premises licensee ~~up to 9 liters of spirits during any 1 month and~~
 10 an on-premises licensee may purchase, collectively from specially
 11 designated distributors, ~~up to 9 liters of spirits. during any 1~~
 12 ~~month.~~ Notwithstanding any other provision of this act or rule
 13 promulgated under this act, a specially designated distributor is
 14 only liable for knowingly violating this section. An on-premises
 15 licensee shall maintain and make available to the commission ~~upon~~
 16 **on** request records verifying the purchases described in this
 17 subsection.

18 (11) In addition to paying a vendor of spirits the acquisition
 19 price for purchasing spirits, the commission may pay a vendor of
 20 spirits an additional amount of not less than \$4.50 and not more
 21 than \$8.25 for each case of spirits purchased as an offset to the
 22 costs being incurred by that vendor of spirits in contracting with
 23 an authorized distribution agent for warehousing and delivering
 24 spirits to retailers. The payment described in this subsection may
 25 not be included in the cost of purchasing spirits by the commission
 26 and is not subject to the commission's markup, special taxes, or
 27 state sales tax. The per-case offset established by this subsection
 28 may be increased by the state administrative board each January to
 29 reflect reasonable increases in the authorized distribution agent's



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

