

SENATE BILL NO. 942

May 28, 2020, Introduced by Senator NESBITT and referred to the Committee on Regulatory Reform.

A bill to amend 1998 PA 58, entitled "Michigan liquor control code of 1998," by amending sections 205, 233, 609c, 609d, and 1014 (MCL 436.1205, 436.1233, 436.1609c, 436.1609d, and 436.2014), section 205 as amended by 2015 PA 246, section 609c as added by 2017 PA 130, section 609d as added by 2020 PA 26, and section 1014 as added by 2015 PA 47, and by adding sections 537a, 538, and 551.

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

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

11 (a) The person satisfies all applicable commission rules
12 prescribing qualifications for licensure promulgated under section
13 215.

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

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

20 (3) An authorized distribution agent shall not have a direct
21 or indirect interest in a supplier of spirits or in a retailer. A
22 supplier of spirits or a retailer shall not have a direct or
23 indirect interest in an authorized distribution agent. An
24 authorized distribution agent shall not hold title to spirits.

25 (4) An authorized distribution agent shall deliver to each
26 retailer located in its assigned distribution area on at least a
27 weekly basis if the order meets the minimum requirements. Except
28 that in a week that accompanies a state holiday, the commission may
29 order a modified delivery schedule if a retailer will not wait

1 longer than 9 days between deliveries because of the modified
2 delivery schedule. The commission shall provide for an integrated
3 ~~en-line~~**online** ordering system for spirits and shall require the
4 continuance of any ordering system in existence on the activation
5 date of the system established under section 206. The commission
6 shall set minimum requirements that must be a sufficient number of
7 bottles to comprise not more than 2 cases. A retailer may pick up
8 the product at the authorized distribution agent's warehouse. To
9 avoid occasional emergency outages of spirits, a retail licensee
10 may make up to 12 special emergency orders to an authorized
11 distribution agent in each calendar year. An authorized
12 distribution agent shall make a special emergency order available
13 to the retail licensee within 18 hours of the placing of the order.
14 An authorized distribution agent shall make a special emergency
15 order placed on Saturday or Sunday available to the retail licensee
16 before noon on the following Monday. An authorized distribution
17 agent may impose a fee of up to \$20.00 to deliver a special
18 emergency order to a retail licensee.

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

24 (a) After processing an order from a retailer, an authorized
25 distribution agent shall contact a retailer to confirm the quantity
26 of cases or bottles, or both, and the exact dollar total of the
27 order.

28 (b) The authorized distribution agent shall coordinate with
29 the retailer the date and time a driver is scheduled to deliver the

1 order to a ferry transport dock, shall arrange any ferry, drayage,
2 or other appropriate service, and shall pick up the retailer's
3 payment at that time.

4 (c) The ferry transport company or company representing any
5 other form of conveyance shall take the retailer's payment to the
6 mainland dock and give that payment to the authorized distribution
7 agent's driver.

8 (d) The ferry transport company or company representing any
9 other form of conveyance shall transport the order to the drayage
10 or other appropriate company at the island dock for immediate
11 delivery to the retailer.

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

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

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

27 (8) An authorized distribution agent or prospective authorized
28 distribution agent shall maintain and make available to the
29 commission or its representatives, on notice, any contract or

1 written agreement it has with a supplier of spirits or other
 2 authorized distribution agent for the warehousing and delivering of
 3 spirits in this state.

4 (9) For a violation of this act, a rule promulgated under this
 5 act, or the terms of an order appointing an authorized distribution
 6 agent, an authorized distribution agent is subject to the
 7 suspension, revocation, forfeiture, and penalty provisions of
 8 sections 903(1) and 907 in the same manner in which a licensee
 9 would be subject to those provisions. An authorized distribution
 10 agent aggrieved by a penalty imposed by the commission may invoke
 11 the hearing and appeal procedures of section 903(2) and rules
 12 promulgated under ~~that~~ section 903.

13 (10) ~~A~~ **Beginning with the effective date of the amendatory act**
 14 **that added this sentence through December 31, 2021, a specially**
 15 **designated distributor may sell to an on-premises licensee an**
 16 **unlimited amount of spirits. After December 31, 2021, a specially**
 17 designated distributor may sell to an on-premises licensee up to ~~9~~
 18 **225** liters of spirits during any ~~1-month~~ **12-month period** and an on-
 19 premises licensee may purchase, collectively from specially
 20 designated distributors, up to ~~9~~ **225** liters of spirits during any ~~1~~
 21 ~~month.~~ **12-month period.** Notwithstanding any other provision of this
 22 act or rule promulgated under this act, a specially designated
 23 distributor is only liable for knowingly violating this section. An
 24 on-premises licensee shall maintain and make available to the
 25 commission ~~upon~~ **on** request records verifying the purchases
 26 described in this subsection.

27 (11) In addition to paying a vendor of spirits the acquisition
 28 price for purchasing spirits, the commission may pay a vendor of
 29 spirits an additional amount of not less than \$4.50 and not more

1 than \$8.25 for each case of spirits purchased as an offset to the
2 costs being incurred by that vendor of spirits in contracting with
3 an authorized distribution agent for warehousing and delivering
4 spirits to retailers. The payment described in this subsection may
5 not be included in the cost of purchasing spirits by the commission
6 and is not subject to the commission's markup, special taxes, or
7 state sales tax. The per-case offset established by this subsection
8 may be increased by the state administrative board each January to
9 reflect reasonable increases in the authorized distribution agent's
10 cost of warehousing and delivering. As used in this subsection,
11 "case" means a container holding twelve 750 ml bottles of spirits
12 or other containers containing spirits that are standard to the
13 industry.

14 Sec. 233. (1) The commission shall establish uniform prices
15 for the sale of alcoholic liquor ~~in state liquor stores and by~~
16 specially designated distributors. The prices ~~shall~~**must** return a
17 gross profit to the commission of not less than 51% and not greater
18 than 65%. If alcoholic liquor purchased by the commission has not
19 met sales standards established by the commission for ~~a period of 6~~
20 months, the commission may sell the alcoholic liquor at a price to
21 be approved by the state administrative board.

22 (2) Notwithstanding subsection (1), the commission may
23 establish by rule prices for the sale of alcoholic liquor to
24 hospitals, charitable institutions, and military establishments
25 located in this state.

26 (3) ~~There shall be allowed a discount of 17% deducted from the~~
27 ~~sale price established by the commission on the sale of~~ **Except as**
28 **otherwise provided in this subsection, specially designated**
29 **distributors and on-premises licensees are entitled to a 17%**

1 discount from the uniform prices described in subsection (1) on
2 alcoholic liquor ~~made by the~~ purchased from this state. ~~liquor~~
3 ~~stores to specially designated distributors and establishments~~
4 ~~licensed to sell for consumption on the premises.~~ Beginning with the
5 effective date of the amendatory act that added this sentence
6 through December 31, 2021, on-premises licensees are entitled to a
7 30% discount from the uniform prices described in subsection (1) on
8 alcoholic liquor purchased from this state.

9 Sec. 537a. (1) Notwithstanding anything in this act to the
10 contrary, an on-premises licensee may fill and sell qualified
11 containers with beer, wine, mixed spirit drink, or spirits for
12 consumption off the premises under the following conditions:

13 (a) The on-premises licensee or his or her agent or employee
14 does not fill a qualified container in advance of the sale.

15 (b) The on-premises licensee complies with all applicable
16 rules promulgated by the commission.

17 (2) Notwithstanding anything in this act to the contrary, an
18 on-premises licensee may deliver beer, wine, mixed spirit drink, or
19 spirits to a consumer in this state if the on-premises licensee
20 does all of the following:

21 (a) Complies with all laws of this state, including, but not
22 limited to, the prohibition on sales to minors.

23 (b) Stamps, prints, or labels on the outside of the qualified
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 identification verifying his or her age.

27 (c) Does not allow a straw hole on the qualified container.

28 (3) As used in this section:

29 (a) "Consumer" means that term as defined in section 203.

1 (b) "Qualified container" means any clean, sealable container
2 that is for the sale of alcoholic liquor for consumption off the
3 premises and that has a liquid capacity that does not exceed 1
4 gallon.

5 Sec. 538. (1) Until December 31, 2021, an on-premises licensee
6 that has written approval from the commission to have outdoor
7 service in an outdoor service area under R 436.1419 of the Michigan
8 Administrative Code may add seating to the outdoor service area
9 without the approval of the commission or the governing body of the
10 local unit of government in which the licensed premises is located.

11 (2) Until December 31, 2021, an on-premises licensee that has
12 written approval from the commission to have outdoor service in an
13 outdoor service area under R 436.1419 of the Michigan
14 Administrative Code may add a bar to the outdoor service area
15 without the approval of the commission or the governing body of the
16 local unit of government in which the licensed premises is located.

17 Sec. 551. (1) The governing body of a local unit of government
18 may designate a social district that contains a commons area that
19 may be used by on-premises licensees that obtain a social district
20 permit. If the governing body of a local unit of government
21 designates a social district that contains a commons area under
22 this section, the governing body must define and clearly mark the
23 commons area in a manner prescribed by the commission. The
24 governing body may, at any time, revoke the designation if it
25 determines that the commons area threatens the health, safety, or
26 welfare of the public or has become a public nuisance. The
27 governing body shall file the designation or the revocation of the
28 designation with the commission.

29 (2) The holder of a social district permit may sell alcoholic

1 liquor for consumption on the premises within the confines of a
2 commons area. The consumption of alcoholic liquor in the commons
3 area may only occur during the legal hours for the sale of
4 alcoholic liquor by the permittee. Only the holder of a social
5 district permit or employees of that permittee may sell or dispense
6 alcoholic liquor in the commons area.

7 (3) The holder of a social district permit may only serve
8 alcoholic liquor to be consumed in the commons area in containers
9 that prominently display the permittee's trade name or logo or some
10 other mark that is unique to the permittee under the permittee's
11 on-premises license. The holder of a social district permit shall
12 not allow alcoholic liquor to leave the commons area or its
13 premises.

14 (4) An on-premises licensee that is adjacent to a commons area
15 in a social district designated by the governing body of a local
16 unit of government under this section may obtain from the
17 commission an annual social district permit as provided in this
18 section. The social district permit must be issued for the same
19 period and may be renewed in the same manner as the on-premises
20 license held by the applicant. The commission shall develop an
21 application for a social district permit and shall charge a fee of
22 \$250.00 for a social district permit. On receipt of a completed
23 application and the fee, the commission shall notify the governing
24 body of the local unit of government and verify the designation of
25 a social district and that the location listed on the application
26 is adjacent to and qualifies for a social district permit under
27 this section. An application for a social district permit must be
28 approved by the governing body of the local unit of government in
29 which the applicant's place of business is located before the

1 permit is granted by the commission. The commission shall provide
 2 the governing body of the local unit of government and the local
 3 chief of police with the applicant's name, business address, and
 4 business telephone number to accomplish the review as required by
 5 this subsection.

6 (5) As used in this section, "commons area" means an area
 7 within a social district designated by the governing body of the
 8 local unit of government that is shared by and abuts the premises
 9 of at least 2 other on-premises licensees.

10 Sec. 609c. (1) A manufacturer that sells direct to a retailer
 11 as provided under section 203(19) or a wholesaler may refund to a
 12 retailer the amount the retailer paid for beer or wine, as
 13 applicable, or a manufacturer that sells direct to a retailer as
 14 provided under section 203(19) or a wholesaler may replace that
 15 beer or wine for any of the following reasons:

- 16 (a) The beer or wine is outdated.
- 17 (b) The beer or wine is defective.
- 18 (c) An error in the beer or wine delivered.
- 19 (d) The beer or wine may no longer be lawfully sold.
- 20 (e) The termination of the retailer's business.
- 21 (f) The formula, proof, label, or container of the beer or
 22 wine is changed.
- 23 (g) The beer or wine is discontinued.
- 24 (h) The retailer is only open a portion of the year and the
 25 beer or wine is likely to spoil during the off-season.

26 (2) If beer is within 30 days of its out-of-date code, a
 27 manufacturer that sells direct to a retailer as provided under
 28 section 203(19) or a wholesaler may refund to a retailer the amount
 29 the retailer paid for the beer.

1 (3) Until the expiration of the state of emergency declared
2 under Executive Order No. 2020-04 or any extension of that order, a
3 wholesaler shall do either of the following:

4 (a) Refund to an on-premises licensee the amount the on-
5 premises licensee paid for beer or wine, as applicable, if the beer
6 or wine is outdated.

7 (b) Replace beer or wine, including partially used products,
8 for an on-premises licensee, as applicable, if the beer or wine is
9 outdated. The wholesaler shall replace beer or wine under this
10 subdivision before the outdated beer or wine is picked up by the
11 wholesaler.

12 (4) ~~(3)~~—A manufacturer that sells direct to a retailer as
13 provided under section 203(19) or a wholesaler may only issue a
14 refund or replacement under this section for beer or wine that the
15 manufacturer or wholesaler sold to the retailer.

16 Sec. 609d. (1) A specially designated distributor that sells
17 spirits to a special licensee that is authorized by the commission
18 to sell spirits may refund the special licensee for the return of
19 an unopened bottle in the same amount that the special licensee
20 paid for the spirits, less any of the specially designated
21 distributor's credit card transaction fees incurred from the sale,
22 if the bottle is without damage to the exterior that would prevent
23 the salability of the bottle.

24 (2) The commission shall do either of the following:

25 (a) Refund to an on-premises licensee the amount the on-
26 premises licensee paid for spirits if the spirits are outdated.

27 (b) Replace spirits for an on-premises licensee if the spirits
28 are outdated. The commission or its authorized distribution agent
29 shall replace spirits under this subdivision before the outdated

1 **spirits are picked up by the commission or its authorized**
2 **distribution agent.**

3 Sec. 1014. (1) An on-premises licensee shall not sell, offer
4 to sell, or advertise the sale of an unlimited quantity of
5 alcoholic liquor at a specific price unless all of the following
6 conditions are met:

7 (a) The sale, offer, or advertisement is in connection with a
8 private function.

9 (b) The on-premises licensee has entered into a written
10 agreement with the organizer of the private function stating all of
11 the following:

12 (i) The date and time the event will be held.

13 (ii) The location of the event.

14 (iii) The terms under which alcohol will be sold and served
15 during the event.

16 (c) The on-premises licensee makes available to the commission
17 and local law enforcement, on notice, the written agreement
18 described in subdivision (b).

19 (2) An on-premises licensee shall not sell, offer to sell, or
20 advertise the sale of ~~2-3~~ or more identical drinks containing
21 alcoholic liquor to an individual for the individual's consumption
22 for 1 price. If ~~2-3~~ or more identical drinks containing alcoholic
23 liquor are served to an individual at 1 time, the price charged for
24 the ~~second-third~~ and each additional drink must be the same as the
25 price charged for the first drink.

26 (3) As used in this section, "private function" means an event
27 that meets all of the following conditions:

28 (a) It is a prearranged private party, private function, or
29 private event for a specific social or business occasion.

1 (b) Attendance is only by invitation or reservation.

2 (c) It is not open to the general public.

3 (d) The guests are served in an outdoor service area or room
4 that is well-defined and clearly marked and designated and used
5 exclusively for the event.