

Act No. 274
Public Acts of 2001
Approved by the Governor
January 11, 2002
Filed with the Secretary of State
January 11, 2002
EFFECTIVE DATE: January 11, 2002

**STATE OF MICHIGAN
91ST LEGISLATURE
REGULAR SESSION OF 2001**

Introduced by Senator Johnson

ENROLLED SENATE BILL No. 527

AN ACT to amend 1998 PA 58, entitled "An act to create a commission for the control of the alcoholic beverage traffic within this state, and to prescribe its powers, duties, and limitations; to provide for powers and duties for certain state departments and agencies; to impose certain taxes for certain purposes; to provide for the control of the alcoholic liquor traffic within this state and to provide for the power to establish state liquor stores; to provide for the care and treatment of alcoholics; to provide for the incorporation of farmer cooperative wineries and the granting of certain rights and privileges to those cooperatives; to provide for the licensing and taxation of activities regulated under this act and the disposition of the money received under this act; to prescribe liability for retail licensees under certain circumstances and to require security for that liability; to provide procedures, defenses, and remedies regarding violations of this act; to provide for the enforcement and to prescribe penalties for violations of this act; to provide for allocation of certain funds for certain purposes; to provide for the confiscation and disposition of property seized under this act; to provide referenda under certain circumstances; and to repeal acts and parts of acts," by amending section 205 (MCL 436.1205), as amended by 1998 PA 416, and by adding section 206.

The People of the State of Michigan enact:

Sec. 205. (1) If the commission privatizes any portion of the system existing on December 19, 1996 under which spirits are warehoused or distributed, the commission shall, as provided in section 203(1), by order appoint authorized distribution agents to engage in the warehousing and delivery of spirits in this state so as to ensure that all retail licensees continue to be properly serviced with spirits. An authorized distribution agent is subject to uniform requirements, including business operating procedures, that the commission may prescribe by rule, subject to this section.

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

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

(b) The person has entered into a written agreement or contract with a supplier of spirits for the purposes of warehousing and delivering a brand or brands of spirits of that supplier of spirits.

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

(3) An authorized distribution agent shall not have a direct or indirect interest in a supplier of spirits or in a retailer. A supplier of spirits or a retailer shall not have a direct or indirect interest in an authorized distribution agent. An

authorized distribution agent shall not hold title to spirits. After September 24, 1996, an authorized distribution agent or an applicant to become an authorized distribution agent who directly or indirectly becomes licensed subsequently as a wholesaler shall not be appointed to sell a brand of wine in a county or part of a county for which a wholesaler has been appointed to sell that brand under an agreement required by this act. A wholesaler who directly or indirectly becomes an authorized distribution agent shall not sell or be appointed to sell a brand of wine to a retailer in a county or part of a county for which another wholesaler has been appointed to sell that brand under an agreement required by this act, unless that wholesaler was appointed to sell and was actively selling that brand to retailers in that county or part of that county prior to September 24, 1996, or unless the sale and appointment is the result of an acquisition, purchase, or merger with the existing wholesaler who was selling that brand to a retailer in that county or part of that county prior to September 24, 1996.

(4) An authorized distribution agent shall deliver to each retailer located in its assigned distribution area on at least a weekly basis if the order meets the minimum requirements. Except that in those weeks that accompany a state holiday, the commission may order a modified delivery schedule provided that a retailer waits not longer than 9 days between deliveries due to a modified delivery schedule. Until the system established by the commission under section 206 is activated, the authorized distribution agent shall provide retailers access to a computer application that includes the capability to determine whether certain spirits are currently available for delivery. Beginning on the date the system is established by the commission under section 206, the commission shall provide for an integrated on-line ordering system for spirits and shall require the continuance of any ordering system in existence on the effective date of section 206. The minimum requirements shall be set by the commission and shall be a sufficient number of bottles to comprise not more than 2 cases. A retailer may pick up the product at the authorized distribution agent's warehouse. To avoid occasional emergency outages of spirits, a retail licensee may make up to 12 special emergency orders to an authorized distribution agent per calendar year which order shall be made available to the retail licensee within 18 hours of the placing of the order. A special emergency order placed on Saturday or Sunday shall be made available to the retail licensee before noon on the following Monday. An authorized distribution agent may impose a fee of up to \$20.00 to deliver a special emergency order to a retail licensee.

(5) In locations inaccessible to a motor vehicle as that term is defined by the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923, the authorized distribution agent shall arrange that a delivery of spirits to a retailer be in compliance with the following procedures:

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

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

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

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

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

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

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

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

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

(10) A specially designated distributor may sell to an on-premises licensee up to 9 liters of spirits during any 1-month period and an on-premises licensee may purchase, collectively from specially designated distributors, up to that amount during any 1-month period. Notwithstanding any other provision of this act or rule promulgated under this act, a specially designated distributor is only liable for knowingly violating this section. Records verifying these purchases shall be maintained by the on-premises licensee and be available to the commission upon request.

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

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

(b) Providing a list of employment opportunities created by the authorized distribution agent in the distribution of liquor in Michigan to each individual whose name and resume is transmitted from the commission.

(c) Providing an opportunity for application and interview to any terminated state worker who indicates an interest in pursuing a job opportunity with the authorized distribution agent.

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

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

(13) In addition to paying a vendor of spirits the acquisition price for purchasing spirits, the commission may pay a vendor of spirits an additional amount of not less than \$4.50 and not more than \$7.50 for each case of spirits purchased as an offset to the costs being incurred by that vendor of spirits in contracting with an authorized distribution agent for the warehousing and delivery of spirits to retailers. The payment described in this subsection shall not be included in the cost of purchasing spirits by the commission and shall not be subject to the commission's markup, special taxes, or state sales tax. The per-case offset established by this subsection may be increased by the state administrative board each January to reflect reasonable increases in the authorized distribution agent's cost of warehousing and delivery. As used in this subsection, "case" means a container holding twelve 750 ml bottles of spirits or other containers containing spirits which are standard to the industry.

Sec. 206. (1) Not later than January 1, 2003, the commission shall provide for an integrated on-line ordering system for retail licensees to place orders for spirits from authorized distribution agents. The system shall allow retail licensees to order all brands and types of spirits from the commission and provide the order to the appropriate authorized distribution agents.

(2) The commission may enter into any agreements with or contract with private or other public entities as provided for or allowed by law to establish the integrated on-line ordering system described in subsection (1). A licensee of the commission or an authorized distribution agent shall not have a direct or indirect interest in the person with whom the commission contracts or enters into an agreement to establish the integrated on-line ordering system described in subsection (1). Ownership of the integrated on-line ordering system remains with the commission. The commission may, through issuance of an order, allow banner advertising in conjunction with the on-line ordering system as a means of defraying the costs of operation or maintenance, or both, of the system.

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate.

Jay E. Randall

Clerk of the House of Representatives.

Approved

.....
Governor.