

SENATE BILL No. 1430

July 21, 2010, Introduced by Senators THOMAS, SANBORN, GILBERT, RICHARDVILLE, HUNTER, JACOBS, PRUSI, PATTERSON, BASHAM, CLARKE, STAMAS, OLSHOVE, CLARK-COLEMAN, GLEASON, WHITMER, SCOTT, JELINEK, KAHN, SWITALSKI, NOFS, CHERRY and CROPSEY and referred to the Committee on Economic Development and Regulatory Reform.

A bill to amend 1998 PA 58, entitled
"Michigan liquor control code of 1998,"
by amending sections 205 and 307 (MCL 436.1205 and 436.1307),
section 205 as amended by 2001 PA 274.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

1 that the commission may prescribe by rule, subject to this section.

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

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

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

12 (c) The person has an adequate warehousing facility located in
13 this state for the storing of spirits from which all delivery of
14 spirits to retail licensees shall 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 ~~After September 24, 1996, an authorized distribution agent or an~~
21 ~~applicant to become an authorized distribution agent who directly~~
22 ~~or indirectly becomes licensed subsequently as a wholesaler shall~~
23 ~~not be appointed to sell a brand of wine in a county or part of a~~
24 ~~county for which a wholesaler has been appointed to sell that brand~~
25 ~~under an agreement required by this act. A wholesaler who directly~~
26 ~~or indirectly becomes an authorized distribution agent shall not~~
27 ~~sell or be appointed to sell a brand of wine to a retailer in a~~

1 ~~county or part of a county for which another wholesaler has been~~
2 ~~appointed to sell that brand under an agreement required by this~~
3 ~~act, unless that wholesaler was appointed to sell and was actively~~
4 ~~selling that brand to retailers in that county or part of that~~
5 ~~county prior to September 24, 1996, or unless the sale and~~
6 ~~appointment is the result of an acquisition, purchase, or merger~~
7 ~~with the existing wholesaler who was selling that brand to a~~
8 ~~retailer in that county or part of that county prior to September~~
9 ~~24, 1996.~~

10 (4) An authorized distribution agent shall deliver to each
11 retailer located in its assigned distribution area on at least a
12 weekly basis if the order meets the minimum requirements. Except
13 that in those weeks that accompany a state holiday, the commission
14 may order a modified delivery schedule provided that a retailer
15 waits not longer than 9 days between deliveries due to a modified
16 delivery schedule. Until the system established by the commission
17 under section 206 is activated, the authorized distribution agent
18 shall provide retailers access to a computer application that
19 includes the capability to determine whether certain spirits are
20 currently available for delivery. Beginning on the date the system
21 is established by the commission under section 206, the commission
22 shall provide for an integrated ~~en-line~~ **ONLINE** ordering system for
23 spirits and shall require the continuance of any ordering system in
24 existence on the effective date of section 206. The minimum
25 requirements shall be set by the commission and shall be a
26 sufficient number of bottles to comprise not more than 2 cases. A
27 retailer may pick up the product at the authorized distribution

1 agent's warehouse. To avoid occasional emergency outages of
2 spirits, a retail licensee may make up to 12 special emergency
3 orders to an authorized distribution agent per calendar year which
4 order shall be made available to the retail licensee within 18
5 hours of the placing of the order. A special emergency order placed
6 on Saturday or Sunday shall be made available to the retail
7 licensee before noon on the following Monday. An authorized
8 distribution agent may impose a fee of up to \$20.00 to deliver a
9 special emergency order to a retail licensee.

10 (5) In locations inaccessible to a motor vehicle as that term
11 is defined by the Michigan vehicle code, 1949 PA 300, MCL 257.1 to
12 257.923, the authorized distribution agent shall arrange that a
13 delivery of spirits to a retailer be in compliance with the
14 following procedures:

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

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

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

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

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

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

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

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

27 (9) For any violation of this act, rules promulgated under

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

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

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

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

27 (b) Providing a list of employment opportunities created by

1 the authorized distribution agent in the distribution of liquor in
2 Michigan to each individual whose name and resume is transmitted
3 from the commission.

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

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

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

19 (13) In addition to paying a vendor of spirits the acquisition
20 price for purchasing spirits, the commission may pay a vendor of
21 spirits an additional amount of not less than \$4.50 and not more
22 than \$7.50 for each case of spirits purchased as an offset to the
23 costs being incurred by that vendor of spirits in contracting with
24 an authorized distribution agent for the warehousing and delivery
25 of spirits to retailers. The payment described in this subsection
26 shall not be included in the cost of purchasing spirits by the
27 commission and shall not be subject to the commission's markup,

1 special taxes, or state sales tax. The per-case offset established
2 by this subsection may be increased by the state administrative
3 board each January to reflect reasonable increases in the
4 authorized distribution agent's cost of warehousing and delivery.
5 As used in this subsection, "case" means a container holding twelve
6 750 ml bottles of spirits or other containers containing spirits
7 which are standard to the industry.

8 Sec. 307. (1) A manufacturer, ~~and AN~~ outstate seller of wine,
9 **AND A MASTER DISTRIBUTOR** shall grant to each of its wholesalers a
10 sales territory within which the wholesaler shall be a distributor
11 of the specified brand or brands of the manufacturer, ~~or~~ outstate
12 seller of wine, **OR MASTER DISTRIBUTOR UNDER AN AGREEMENT AS**
13 **REQUIRED UNDER THIS ACT.** The territory shall be the territory
14 agreed upon between the wholesaler and manufacturer, ~~or~~ outstate
15 seller of wine, **OR MASTER DISTRIBUTOR.** ~~A manufacturer or outstate~~
16 ~~seller of wine may grant the right to sell a specified brand or~~
17 ~~brands in a sales territory to more than 1 wholesaler.~~ **EXCEPT AS**
18 **PROVIDED FOR IN SUBSECTION (9) AND BEGINNING JUNE 1, 2010, A**
19 **MANUFACTURER, OUTSTATE SELLER OF WINE, OR MASTER DISTRIBUTOR SHALL**
20 **NOT GRANT THE RIGHT TO SELL A SPECIFIED BRAND OR BRANDS OF WINE IN**
21 **A SALES TERRITORY TO MORE THAN 1 WINE WHOLESALER. A MASTER**
22 **DISTRIBUTOR SHALL NOT ITSELF DISTRIBUTE A SPECIFIED BRAND OR BRANDS**
23 **OF WINE IN THE SAME SALES TERRITORY WHERE THAT MASTER DISTRIBUTOR**
24 **HAS GRANTED THE RIGHT TO DISTRIBUTE THAT SPECIFIED BRAND OR BRANDS**
25 **OF WINE IN THAT SALES TERRITORY TO ANOTHER WINE WHOLESALER. AS USED**
26 **IN THIS SECTION, "MASTER DISTRIBUTOR" MEANS A WHOLESALER THAT ACTS**
27 **IN THE SAME OR SIMILAR CAPACITY AS A WINE MAKER, WINE MANUFACTURER,**

1 OR OUTSTATE SELLER OF WINE FOR A BRAND OR BRANDS OF WINE TO OTHER
2 WHOLESALERS ON A REGULAR BASIS IN THE NORMAL COURSE OF BUSINESS.

3 (2) Notwithstanding subsection (1), a brand extension is not
4 considered a new or different brand. A manufacturer or outstate
5 seller of wine shall assign a brand extension to the wholesaler
6 that was granted the sales territory for the brand from which the
7 brand extension resulted.

8 (3) Subsection (2) does not apply where, before January 1,
9 1994, a manufacturer or outstate seller of wine had assigned a
10 brand extension to a wholesaler that was not the appointed
11 wholesaler for the brand from which the brand extension was made.

12 (4) Until July 1, 1995, a manufacturer or outstate seller of
13 wine who acquired or otherwise obtained the right to assign brands
14 of another manufacturer or outstate seller of wine between January
15 1, 1994 and July 1, 1995 shall assign a brand extension to the
16 wholesaler that was granted the sales territory for the brand from
17 which the brand extension resulted. Beginning July 1, 1995, a
18 manufacturer or outstate seller of wine who acquires or otherwise
19 obtains the right to assign brands of another manufacturer or
20 outstate seller of wine is not required to assign a new brand
21 extension to the wholesaler that is granted the exclusive sales
22 territory to the brand from which the new brand extension results.
23 Any brand extension assigned between January 1, 1994 and July 1,
24 1995 shall remain assigned to the assigned wholesaler.

25 (5) A manufacturer of a mixed wine drink, mixed spirit drink
26 manufacturer, outstate seller of a mixed wine drink, or outstate
27 seller of mixed spirit drink shall grant to each of its wholesalers

1 an exclusive sales territory in which the wholesaler shall be a
2 distributor of the specified brand or brands of the manufacturer or
3 outstate seller. The territory shall be the territory agreed upon
4 between the wholesaler and the manufacturer of a mixed wine drink,
5 mixed spirit drink manufacturer, outstate seller of mixed wine
6 drinks, or outstate seller of mixed spirit drink.

7 (6) Notwithstanding subsection (5), a brand extension is not
8 considered a new or different brand. A manufacturer of a mixed wine
9 drink, mixed spirit drink manufacturer, outstate seller of a mixed
10 wine drink, or outstate seller of mixed spirit drink shall assign a
11 brand extension to the wholesaler that was granted the exclusive
12 sales territory for the brand from which the brand extension
13 resulted.

14 (7) Subsection (6) does not apply where, before January 1,
15 1994, a manufacturer of a mixed wine drink, mixed spirit drink
16 manufacturer, outstate seller of a mixed wine drink, or outstate
17 seller of mixed spirit drink had assigned a brand extension to a
18 wholesaler that was not the appointed wholesaler for the brand from
19 which the brand extension was made.

20 (8) Until July 1, 1995, a manufacturer of a mixed wine drink,
21 mixed spirit drink manufacturer, outstate seller of mixed wine
22 drink, or outstate seller of mixed spirit drink who acquired or
23 otherwise obtained the right to assign brands of another
24 manufacturer of a mixed wine drink, mixed spirit drink
25 manufacturer, outstate seller of a mixed wine drink, or outstate
26 seller of mixed spirit drink between January 1, 1994 and July 1,
27 1995 shall assign a brand extension to the wholesaler that was

1 granted the exclusive sales territory for the brand from which the
2 brand extension resulted. Beginning July 1, 1995, a manufacturer of
3 mixed wine drink, mixed spirit drink manufacturer, outstate seller
4 of mixed wine drink, or outstate seller of mixed spirit drink who
5 acquires or otherwise obtains the right to assign brands of another
6 manufacturer of mixed wine drink, mixed spirit drink manufacturer,
7 outstate seller of mixed wine drink, or outstate seller of mixed
8 spirit drink is not required to assign a new brand extension to the
9 wholesaler that is granted the exclusive sales territory to the
10 brand from which the new brand extension results. Any brand
11 extension assigned between January 1, 1994 and July 1, 1995 shall
12 remain assigned to the assigned wholesaler.

13 (9) SUBSECTION (1) DOES NOT PROHIBIT ANY OF THE FOLLOWING:

14 (A) A MANUFACTURER OF WINE, AN OUTSTATE SELLER OF WINE, OR A
15 MASTER DISTRIBUTOR FROM CONTINUING OR RENEWING AN AGREEMENT UNDER
16 THIS ACT WITH A WHOLESALER FOR A SPECIFIED BRAND OR BRANDS FOR ANY
17 COUNTY OR PART OF A COUNTY WHERE MORE THAN 1 WHOLESALER HAS AN
18 AGREEMENT WITH THE MANUFACTURER OF WINE, OUTSTATE SELLER OF WINE,
19 OR MASTER DISTRIBUTOR IN EFFECT ON JUNE 1, 2010 IF THE WHOLESALER
20 HAD AN AGREEMENT TO DISTRIBUTE THAT SPECIFIED BRAND OR BRANDS IN
21 THAT COUNTY OR THAT PART OF A COUNTY AND WAS A MASTER DISTRIBUTOR
22 OR WAS ACTIVELY SELLING THAT BRAND OR BRANDS OF WINE TO A RETAILER
23 IN THAT COUNTY OR THAT PART OF A COUNTY ON JUNE 1, 2010.

24 (B) A WHOLESALER FROM SELLING OR TRANSFERRING THE WHOLESALER'S
25 DISTRIBUTION RIGHTS OR A MANUFACTURER OF WINE, OUTSTATE SELLER OF
26 WINE, OR MASTER DISTRIBUTOR FROM APPROVING THE SALE OR TRANSFER OF
27 A WHOLESALER'S DISTRIBUTION RIGHTS TO A SPECIFIED BRAND OR BRANDS

1 OF WINE FOR ANY COUNTY OR PART OF A COUNTY TO ANOTHER WHOLESALER IF
2 THE SELLING OR TRANSFERRING WHOLESALER, OR ANY OF ITS PREDECESSORS,
3 HAD THE RIGHT TO DISTRIBUTE THAT BRAND OR BRANDS OF WINE IN THAT
4 COUNTY OR PART OF THAT COUNTY AND WAS ACTIVELY SELLING THAT BRAND
5 OR BRANDS TO A RETAILER IN THAT COUNTY OR THAT PART OF A COUNTY ON
6 JUNE 1, 2010 OR WAS ACTING AS A MASTER DISTRIBUTOR FOR THAT COUNTY
7 OR PART OF THAT COUNTY ON JUNE 1, 2010.