

HOUSE BILL No. 4174

February 10, 2015, Introduced by Reps. Courser and Gamrat 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 and except as provided in subsection

1 (11), a retailer shall not deliver alcoholic liquor to a consumer
2 in this state at the home or business of the consumer or at any
3 location away from the licensed premises of the retailer. The
4 purpose of this subsection is to exercise ~~the state of Michigan's~~
5 **THIS STATE'S** authority under section 2 of amendment XXI of the
6 constitution of the United States, to maintain the inherent police
7 powers to regulate the transportation and delivery of alcoholic
8 liquor, and to promote a transparent system for the transportation
9 and delivery of alcoholic liquor. The regulation described in this
10 subsection is considered necessary for both of the following
11 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 direct shipper may sell,
18 deliver, or import wine ~~,~~ to consumers in this state by means of
19 any mail order, ~~internet,~~ **INTERNET**, telephone, computer, device, or
20 other electronic means, or sell directly to a consumer on the
21 winery premises. A direct shipper that sells, delivers, or imports
22 wine to a consumer under this subsection shall comply with all of
23 the following:

24 (a) Hold a direct shipper license.

25 (b) Pay any applicable taxes to the commission and pay any
26 applicable taxes to the department of treasury as directed by the
27 department of treasury. Upon the request of the department of

1 treasury, a direct shipper shall furnish an affidavit to verify
2 payment.

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

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

14 (e) Upon request of the commission, make available to the
15 commission any document used to verify the age of the individual
16 ordering or receiving the wine from the direct shipper.

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

22 (g) Place a label on the top panel of the shipping container
23 containing the direct shipper license number, the order number, the
24 name and address of the individual placing the order, and the name
25 of the designated recipient if different from the name of the
26 individual placing the order.

27 (h) Direct ship not more than 1,500 9-liter cases, or 13,500

1 liters in total, of wine in a calendar year to consumers in this
2 state. If a direct shipper, whether located in this state or
3 outside this state, owns, in whole or in part, or commonly manages
4 1 or more direct shippers, it shall not in combination ship to
5 consumers in this state more than 13,500 liters of wine in the
6 aggregate.

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

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

13 (k) Consent and submit to the jurisdiction of the commission,
14 the department of treasury, and the courts of this state concerning
15 enforcement of this section and any related laws, rules, and
16 regulations.

17 (4) Notwithstanding subsection (3), ~~in the case of~~ **FOR** a sale,
18 delivery, or importation of alcoholic liquor occurring by any means
19 described in subsection (3), a person taking the order on behalf of
20 the direct shipper shall comply with subsection (3)(c) ~~through~~ **TO**
21 (g).

22 (5) A person that delivers the wine for a direct shipper under
23 this section shall verify that the individual accepting delivery is
24 21 years of age or older and is the individual who placed the order
25 or the designated recipient, is an individual 21 years of age or
26 older currently occupying or present at the address, or is an
27 individual otherwise authorized through a rule promulgated under

1 this act by the commission to receive alcoholic liquor under this
2 section. If the delivery person, after a diligent inquiry,
3 determines that the purchaser or designated recipient is not 21
4 years ~~OF~~ age or older, the delivery person shall return the wine to
5 the direct shipper. A delivery person who returns wine to the
6 direct shipper because the purchaser or designated recipient is not
7 21 years of age or older is not liable for any damages suffered by
8 the purchaser or direct shipper.

9 (6) All spirits for sale, use, storage, or distribution in
10 this state ~~—~~shall originally be purchased by and imported into the
11 state by the commission, or by prior written authority of the
12 commission.

13 (7) This section does not apply to alcoholic liquor brought
14 into this state for personal or household use in an amount
15 permitted by federal law by an individual 21 years of age or older
16 at the time of reentry into this state from without the territorial
17 limits of the United States if the individual has been outside the
18 territorial limits of the United States for more than 48 hours and
19 has not brought alcoholic liquor into the United States during the
20 preceding 30 days.

21 (8) An individual 21 years of age or older may do either of
22 the following in relation to alcoholic liquor that contains less
23 than 21% alcohol by volume:

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

27 (b) Ship or import from another state alcoholic liquor for

1 that individual's personal use if that personal importation is done
2 in compliance with subsection (1).

3 (9) A direct shipper shall not sell, deliver, or import wine
4 to a consumer unless it applies for and is granted a direct shipper
5 license from the commission. This subsection does not prohibit wine
6 tasting or the selling at retail by a wine maker of wines he or she
7 produced and bottled or wine manufactured for that wine maker by
8 another wine maker, if done in compliance with this act. Only the
9 following persons qualify for the issuance of a direct shipper
10 license:

11 (a) A wine maker.

12 (b) A wine producer and bottler located inside this country
13 but outside of this state holding both a federal basic permit
14 issued by the alcohol and tobacco tax and trade bureau and a
15 license to manufacture wine in its state of domicile.

16 (10) An applicant for a direct shipper license shall submit an
17 application to the commission in a written or electronic format
18 provided by the commission and accompanied by an application and
19 initial license fee of \$100.00. The application ~~shall~~**MUST** be
20 accompanied by a copy or other evidence of the existing federal
21 basic permit or license, or both, held by the applicant. The direct
22 shipper may renew its license annually by submission of a license
23 renewal fee of \$100.00 and a completed renewal application. The
24 commission shall use the fees collected under this section to
25 conduct investigations and audits of direct shippers. The failure
26 to renew, or the revocation or suspension of, the applicant's
27 existing Michigan license, federal basic permit, or license to

1 manufacture wine in its state of domicile is grounds for revocation
2 or denial of the direct shipper license. If a direct shipper is
3 found guilty of violating this act or a rule promulgated by the
4 commission, the commission shall notify both the alcoholic liquor
5 control agency in the direct shipper's state of domicile and the
6 ~~alcohol and tobacco tax and trade bureau~~ **ALCOHOL AND TOBACCO TAX**
7 **AND TRADE BUREAU** of the United States ~~department of treasury~~
8 **DEPARTMENT OF TREASURY** of the violation.

9 (11) Except as otherwise provided under subsection (12), a
10 retailer that holds a specially designated merchant license in this
11 state; an out-of-state retailer that holds its state's substantial
12 equivalent license; or a brewpub, micro brewer, or an out-of-state
13 entity that is the substantial equivalent of a brewpub or micro
14 brewer may deliver beer and wine to the home or other designated
15 location of a consumer in this state if all of the following
16 conditions are met:

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

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

23 (c) If the retailer, brewpub, or micro brewer or its employee
24 intends to provide service to consumers, the retailer, brewpub, or
25 micro brewer or its employee providing the service has received
26 alcohol server training through a server training program approved
27 by the commission.

1 (12) A retailer that holds a specially designated merchant
2 license in this state or an out-of-state retailer that holds its
3 state's substantial equivalent license may utilize a third party
4 that provides delivery service to municipalities in this state that
5 are surrounded by water and inaccessible by motor vehicle to
6 deliver beer and wine to the home or other designated location of
7 that consumer if the delivery service is approved by the commission
8 and agrees to verify that the individual accepting delivery of the
9 beer and wine is at least 21 years of age.

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

14 (a) The retailer is not located in a sales territory for which
15 the qualified micro brewer has granted exclusive sales rights to a
16 wholesaler ~~pursuant to~~ **UNDER** sections 401 and 403 for the sale of
17 any brand or brands of beer produced by that micro brewer.

18 (b) The beer is sold and delivered by an employee of the
19 qualified micro brewer, not an agent, and is transported and
20 delivered utilizing a vehicle owned by the qualified micro brewer,
21 not by a third party delivery service.

22 (c) The qualified micro brewer is in compliance with
23 applicable state and federal law and applicable regulatory
24 provisions of this act and rules adopted by the commission under
25 this act including, but not limited to, those requirements related
26 to each of the following:

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

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

2 (iii) Price schedules and temporary price reductions.

3 (14) **A BREWER MAY SELL ITS BEER DIRECTLY TO A CONSUMER.**

4 (15) **A WINEMAKER MAY SELL ITS WINE DIRECTLY TO A CONSUMER.**

5 (16) ~~(14)~~—As used in this section:

6 (a) "Computer" means any connected, directly interoperable or
7 interactive device, equipment, or facility that uses a computer
8 program or other instructions to perform specific operations
9 including logical, arithmetic, or memory functions with or on
10 computer data or a computer program and that can store, retrieve,
11 alter, or communicate the results of the operations to a person,
12 computer program, computer, computer system, or computer network.

13 (b) "Computer network" means the interconnection of hardwire
14 or wireless communication lines with a computer through remote
15 terminals, or a complex consisting of 2 or more interconnected
16 computers.

17 (c) "Computer program" means a series of internal or external
18 instructions communicated in a form acceptable to a computer that
19 directs the functioning of a computer, computer system, or computer
20 network in a manner designed to provide or produce products or
21 results from the computer, computer system, or computer network.

22 (d) "Computer system" means a set of related, connected or
23 unconnected, computer equipment, devices, software, or hardware.

24 (e) "Consumer" means an individual who purchases **BEER OR** wine
25 for personal consumption and not for resale.

26 (f) "Device" includes, but is not limited to, an electronic,
27 magnetic, electrochemical, biochemical, hydraulic, optical, or

1 organic object that performs input, output, or storage functions by
2 the manipulation of electronic, magnetic, or other impulses.

3 (g) "Diligent inquiry" means a diligent good faith effort to
4 determine the age of an individual, that includes at least an
5 examination of an official Michigan operator's or chauffeur's
6 license, an official Michigan personal identification card, or any
7 other bona fide picture identification that establishes the
8 identity and age of the individual.

9 (h) "Direct shipper" means a person who sells, delivers, or
10 imports wine, to consumers in this state, that he or she produces
11 and bottles or wine that is manufactured by a wine maker for
12 another wine maker and that is transacted or caused to be
13 transacted through the use of any mail order, ~~internet,~~ **INTERNET**,
14 telephone, computer, device, or other electronic means, or sells
15 directly to consumers on the winery premises.

16 (i) "Identification verification service" means any ~~internet-~~
17 ~~based~~ **INTERNET-BASED** service approved by the commission
18 specializing in age and identity verification.

19 (j) "Qualified micro brewer" means a micro brewer that
20 produces in total less than 1,000 barrels of beer per year. In
21 determining the 1,000-barrel threshold, all brands and labels of a
22 micro brewer, whether brewed in this state or outside this state,
23 ~~shall~~ **MUST** be combined.