

SB 527S1, As Passed Senate, December 6, 2001

**SUBSTITUTE FOR
SENATE BILL NO. 527**

A bill to amend 1998 PA 58, entitled
"Michigan liquor control code of 1998,"
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:

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

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1 operating procedures, ~~which~~ THAT the commission may prescribe
2 by rule, subject to this section.

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

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

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

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

16 (3) An authorized distribution agent shall not have a direct
17 or indirect interest in a supplier of spirits or in a retailer.
18 A supplier of spirits or a retailer shall not have a direct or
19 indirect interest in an authorized distribution agent. An autho-
20 rized distribution agent shall not hold title to spirits. ~~After~~
21 ~~September 24, 1996, an authorized distribution agent or an appli-~~
22 ~~cant to become an authorized distribution agent who directly or~~
23 ~~indirectly becomes licensed subsequently as a wholesaler shall~~
24 ~~not be appointed or authorized to sell or distribute a brand of~~
25 ~~wine in an area for which a wholesaler has been assigned or~~
26 ~~authorized to sell or distribute that brand under an agreement~~
27 ~~required by this act. A wholesaler who directly or indirectly~~

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1 ~~becomes an authorized distribution agent shall not be appointed~~
2 ~~or authorized to sell or distribute a brand of wine to a retailer~~
3 ~~in an area for which another wholesaler has been assigned or~~
4 ~~authorized to sell or distribute that brand under an agreement~~
5 ~~required by this act, if the wholesaler was not selling or dis-~~
6 ~~tributing that brand to retailers in that area on or before~~
7 ~~September 24, 1996.~~ 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.

8 (4) An authorized distribution agent shall deliver to each
9 retailer located in its assigned distribution area on at least a
10 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. ~~The~~
11 UNTIL THE SYSTEM ESTABLISHED BY THE COMMISSION UNDER SECTION 206
12 IS ACTIVATED, THE authorized distribution agent shall provide
13 retailers access to a computer application that includes the
14 capability to determine whether certain spirits are currently
15 available for delivery. BEGINNING ON THE DATE THE SYSTEM IS
16 ESTABLISHED BY THE COMMISSION UNDER SECTION 206, THE COMMISSION
17 SHALL PROVIDE FOR AN INTEGRATED ON-LINE ORDERING SYSTEM FOR SPIR-
18 ITS AND SHALL REQUIRE THE CONTINUANCE OF ANY ORDERING SYSTEM IN
19 EXISTENCE ON THE EFFECTIVE DATE OF SECTION 206. The minimum
20 requirements shall be set by the commission and shall be a suffi-
21 cient number of bottles to comprise not more than 2 cases. A
22 retailer may pick up the product at the authorized distribution
23 agent's warehouse. To avoid occasional emergency outages of
24 spirits, a retail licensee may make up to 12 special emergency
25 orders to an authorized distribution agent per calendar year
26 which order shall be made available to the retail licensee within
27 18 hours of the placing of the order. A special emergency order

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1 placed on Saturday or Sunday shall be made available to the
2 retail licensee before noon on the following Monday. An autho-
3 rized distribution agent may impose a fee of up to \$20.00 to
4 deliver a special emergency order to a retail licensee.

5 (5) In locations inaccessible to a motor vehicle as that
6 term is defined by the Michigan vehicle code, 1949 PA 300, MCL
7 257.1 to 257.923, the authorized distribution agent shall arrange
8 that a delivery of spirits to a retailer be in compliance with
9 the following procedures:

10 (a) After processing an order from a retailer, an authorized
11 distribution agent shall contact a retailer to confirm the quan-
12 tity of cases or bottles, or both, and the exact dollar total of
13 the order.

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

19 (c) The ferry transport company or company representing any
20 other form of conveyance shall take the retailer's payment to the
21 mainland dock and give that payment to the authorized distribu-
22 tion agent's driver.

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

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

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

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

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

23 (9) For any violation of this act, rules promulgated under
24 this act, or the terms of an order appointing an authorized dis-
25 tribution agent, an authorized distribution agent shall be
26 subject to the suspension, revocation, forfeiture, and penalty
27 provisions of sections 903(1) and 907 in the same manner in which

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1 a licensee would be subject to those provisions. An authorized
2 distribution agent aggrieved by a penalty imposed by the commis-
3 sion may invoke the hearing and appeal procedures of section
4 903(2) and rules promulgated under that section.

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

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

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

25 (b) Providing a list of employment opportunities created by
26 the authorized distribution agent in the distribution of liquor

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1 in Michigan to each individual whose name and resume is
2 transmitted from the commission.

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

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

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

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

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

8 SEC. 206. (1) NOT LATER THAN JANUARY 1, 2003, THE COMMIS-
9 SION SHALL PROVIDE FOR AN INTEGRATED ON-LINE ORDERING SYSTEM FOR
10 RETAIL LICENSEES TO PLACE ORDERS FOR SPIRITS FROM AUTHORIZED DIS-
11 TRIBUTION AGENTS. THE SYSTEM SHALL ALLOW RETAIL LICENSEES TO
12 ORDER ALL BRANDS AND TYPES OF SPIRITS FROM THE COMMISSION AND
13 PROVIDE THE ORDER TO THE APPROPRIATE AUTHORIZED DISTRIBUTION
14 AGENTS.

15 (2) THE COMMISSION MAY ENTER INTO ANY AGREEMENTS WITH OR
16 CONTRACT WITH PRIVATE OR OTHER PUBLIC ENTITIES AS PROVIDED FOR OR
17 ALLOWED BY LAW TO ESTABLISH THE INTEGRATED ON-LINE ORDERING
18 SYSTEM DESCRIBED IN SUBSECTION (1). A LICENSEE OF THE COMMISSION
19 OR AN AUTHORIZED DISTRIBUTION AGENT SHALL NOT HAVE A DIRECT OR
20 INDIRECT INTEREST IN THE PERSON WITH WHOM THE COMMISSION CON-
21 TRACTS OR ENTERS INTO AN AGREEMENT TO ESTABLISH THE INTEGRATED
22 ON-LINE ORDERING SYSTEM DESCRIBED IN SUBSECTION (1). OWNERSHIP
23 OF THE INTEGRATED ON-LINE ORDERING SYSTEM REMAINS WITH THE
24 COMMISSION.