

**SUBSTITUTE FOR
HOUSE BILL NO. 4422**

A bill to amend 1998 PA 58, entitled
"Michigan liquor control code of 1998,"
by amending section 205 (MCL 436.1205), as amended by 2022 PA 142.

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

1 circumstances exist:

2 (a) The person satisfies all applicable commission rules
3 prescribing qualifications for licensure promulgated under section
4 215.

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

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

11 (3) An authorized distribution agent shall not have a direct
12 or indirect interest in a supplier of spirits or in a retailer. A
13 supplier of spirits or a retailer shall not have a direct or
14 indirect interest in an authorized distribution agent. An
15 authorized distribution agent shall not hold title to spirits.

16 (4) An authorized distribution agent shall deliver to each
17 retailer located in its assigned distribution area on at least a
18 weekly basis if the order meets the minimum requirements. Except
19 that in a week that accompanies a state holiday, the commission may
20 order a modified delivery schedule if a retailer will not wait
21 longer than 9 days between deliveries because of the modified
22 delivery schedule. The commission shall provide for an integrated
23 online ordering system for spirits and shall require the
24 continuance of any ordering system in existence on the activation
25 date of the system established under section 206. The commission
26 shall set minimum requirements that must be a sufficient number of
27 bottles to comprise not more than 2 cases. A retailer may pick up
28 the product at the authorized distribution agent's warehouse. To
29 avoid occasional emergency outages of spirits, a retail licensee

1 may make up to 12 special emergency orders to an authorized
2 distribution agent in each calendar year. An authorized
3 distribution agent shall make a special emergency order available
4 to the retail licensee within 18 hours of the placing of the order.
5 An authorized distribution agent shall make a special emergency
6 order placed on Saturday or Sunday available to the retail licensee
7 before noon on the following Monday. An authorized distribution
8 agent may impose a fee of up to \$20.00 to deliver a special
9 emergency order to a retail licensee.

10 (5) In locations inaccessible to a motor vehicle as that term
11 is defined by section 33 of the Michigan vehicle code, 1949 PA 300,
12 MCL 257.33, an 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 coordinate with
20 the retailer the date and time a driver is scheduled to deliver the
21 order to a ferry transport dock, shall arrange any ferry, drayage,
22 or other appropriate service, and shall pick up the retailer's
23 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.

28 (d) The ferry transport company or company representing any
29 other form of conveyance shall transport the order to the drayage

1 or other appropriate company at the island dock for immediate
2 delivery to the retailer.

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

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

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

18 (8) An authorized distribution agent or prospective authorized
19 distribution agent shall maintain and make available to the
20 commission or its representatives, on notice, any contract or
21 written agreement it has with a supplier of spirits or other
22 authorized distribution agent for the warehousing and delivering of
23 spirits in this state.

24 (9) For a violation of this act, a rule promulgated under this
25 act, or the terms of an order appointing an authorized distribution
26 agent, an authorized distribution agent is subject to the
27 suspension, revocation, forfeiture, and penalty provisions of
28 sections 903(1) and 907 in the same manner in which a licensee
29 would be subject to those provisions. An authorized distribution

1 agent aggrieved by a penalty imposed by the commission may invoke
2 the hearing and appeal procedures of section 903(2) and rules
3 promulgated under section 903.

4 (10) A specially designated distributor may sell to an on-
5 premises retailer up to 120 liters of spirits during any calendar
6 year and an on-premises retailer may purchase, collectively from
7 specially designated distributors, up to 120 liters of spirits
8 during any calendar year. Notwithstanding any other provision of
9 this act or rule promulgated under this act, a specially designated
10 distributor is only liable for knowingly violating this section. An
11 on-premises retailer shall maintain and make available to the
12 commission on request records verifying the purchases described in
13 this subsection. For each month in which an on-premises retailer
14 purchases spirits under this subsection, the on-premises retailer
15 shall submit a report to the commission indicating the purchases
16 the on-premises retailer made under this subsection during that
17 month. By July 1, 2020, the commission shall establish the method
18 and form for the electronic reporting of purchases made under this
19 subsection by on-premises retailers. The commission shall not
20 require an on-premises retailer to submit a report under this
21 subsection in less than monthly intervals and shall not require a
22 report from an on-premises retailer in a month in which the on-
23 premises retailer did not purchase spirits under this subsection.

24 (11) ~~In~~ **Except as otherwise provided in this subsection, in**
25 addition to paying a vendor of spirits the acquisition price for
26 purchasing spirits, the commission may pay a vendor of spirits an
27 additional amount of not less than \$8.25 and not more than \$12.50
28 for each case of spirits purchased as an offset to the costs being
29 incurred by that vendor of spirits in contracting with an

1 authorized distribution agent for warehousing and delivering
 2 spirits to retailers. ~~The Beginning March 1, 2025, the payment~~
 3 ~~described in this subsection is \$12.50. Beginning October 1, 2025,~~
 4 ~~and each October 1 after that date, the state treasurer shall~~
 5 ~~adjust the dollar amount under this subsection by the percentage~~
 6 ~~increase in the Consumer Price Index for the preceding calendar~~
 7 ~~year or 5%, whichever is less. In addition to the per-case offset~~
 8 ~~described in this subsection, a vendor of spirits shall pay to the~~
 9 ~~authorized distribution agent \$1.75 for each case of spirits~~
 10 ~~purchased by the commission. The \$1.75 per-case amount must not be~~
 11 ~~adjusted by the commission or state treasurer, but a vendor of~~
 12 ~~spirits and an authorized distribution agent may agree to a payment~~
 13 ~~amount per case that is greater than the \$1.75 per case amount~~
 14 ~~allowed under this subsection. A payment described in this~~
 15 ~~subsection may must not be included in the cost of purchasing~~
 16 ~~spirits by the commission and is not subject to the commission's~~
 17 ~~markup, special taxes, or state sales tax. The per-case offset~~
 18 ~~established by this subsection may be increased by the state~~
 19 ~~administrative board each January to reflect reasonable increases~~
 20 ~~in the authorized distribution agent's cost of warehousing and~~
 21 ~~delivering.~~

22 (12) The commission may make additional payments to an
 23 authorized distribution agent based on a methodology the commission
 24 establishes. The additional payments under this section must be
 25 paid only by the commission.

26 (13) As used in this ~~subsection, "case" section:~~

27 (a) "Case" means a container holding twelve 750 ml bottles of
 28 spirits or other containers containing spirits that are standard to
 29 the industry.

1 (b) "Consumer Price Index" means the most comprehensive index
2 of consumer prices available for this state from the United States
3 Department of Labor, Bureau of Labor Statistics.