



MEMORANDUM

TO: Alcoholic Beverage Control Board

DATE: January 24, 2024

FROM: Kristina Serezhenkov, Regulations
Specialist

RE: Package Store Written or
Electronic Orders and Shipments
from Manufacturer Direct
Shipment Licensees

This regulations project was initiated at the November 2023 Board meeting to clarify shipment requirements for manufacturer direct shipment licensees and package store licensees. In the proposed regulations both the holder of a package store shipping endorsement and a manufacturer direct shipment license may utilize an internet based age and identification verification service but the holder of a package store shipping endorsement must retain a copy of the purchaser's identification in their records while the manufacturer direct shipment licensee does not.

Background: Internet based age and identification verification – a swiftly changing technology

For Board discussion. Does the Board wish to require the licensee to use a 'board approved' internet based age and identification service?

- From the AVAP (Age Verification Providers Association): "Online age verification is a process of checking one's identity without face-to-face interactions and is based on remotely checking if the person is who they say they are and validating personal information provided by them. It is performed by cross-checking the date of birth provided by a user with the provided identity document. The whole process is conducted online with the support of various automated systems such as AI, machine learning, and human intelligence. Also, it may include biometrics solutions such as face recognition software."
- After research, staff changed the regulations wording from 'internet age verification service' to a more descriptive to our needs and more secure 'internet based age and identification verification service'. All mentions throughout regulations will ask for both 'age' and 'identification'.
- The Wine Institute website notes that many states allow direct to consumer shippers to use an online age verification service. There are only two states (Michigan and Kansas), which require licensees to use a state-approved online age verification service provider. Kansas has three approved providers on their website while Michigan has the same three and one extra.

Those are: LexisNexis. Integrity-ID Verified. IDology, Inc. Veratad Technologies LLC.

- I have used Michigan as an example of what a robust 'approved' service might entail. Michigan defines a 'secure identity verification device' as 'a commercial device that instantly verifies the identity and age of an individual by an electronic scan of a biometric of the individual'. The secure identity verification device must meet the following conditions:
 - The electronic scan of a biometric of the individual is referenced against any form of picture identification described in(regulation describing requirement for picture id).
 - The authenticity of the picture identification was previously verified by an electronic authentication process.
 - The identity of the individual was previously verified through a commercially available knowledge-based electronic authentication process.
 - The authenticated picture identification was securely linked to biometrics contemporaneously collected from the individual.

Michigan's example would indicate that the 'approved' internet based age and identification verification service requires the purchaser using that service to, at the moment they wish to make a purchase, submit a 'selfie' and submit a copy of a photo identification. (biometrics....)

- The following is an outline of the steps the purchaser of alcohol might need to take under the robust Michigan model:
 - Submit their details including name and date of birth.
 - Present an identity document and submit it by scan or photo.
 - Take a real-time selfie and submit it.
 - Optical character recognition (OCR) is used to extract the data and face match technology matches their real-time selfie with their document photo to either approve or deny the purchaser.

The regulations are proposed to be amended as follows:

3 AAC 305.345 Written or electronic orders for shipments subject to a package store shipping endorsement.

This section is repealed and readopted to apply only to written or electronic orders for shipments subject to a package store shipping endorsement. The use of an internet based age and identification verification service is allowed. Labelling is simplified and electronic recordkeeping is allowed.

3 AAC 305.347 Shipments from a manufacturer direct shipment licensee

This new section relates to requirements for shipments from a manufacturer direct shipment licensee. Labelling is simplified. It allows for telephonic orders and use of an internet based age and identification verification service.

3 AAC 305.350 Wine clubs

This section is amended to conform with changes to 305.345. (conforming changes)

3 AAC 305.810. Recordkeeping requirements.

This section is amended to remove manufacturer direct shipment licenses to align record keeping requirements with statute.

Attachments to this memo include:

Draft of proposed regulation changes

Correspondence from Sally Jefferson of the Wine Institute

Example of Michigan regulations

Options for the board:

- Move to approve and send to Law for initial review and (with Law's approval) subsequent public comment
- Move to amend and then send to Law for initial review and (with Law's approval) subsequent public comment
- Move to send back to staff for more work
- Close the regulations project

(Words in **boldface and underlined** indicate language being added; words [CAPITALIZED AND BRACKETED] indicate language being deleted.)

3 AAC 305.345 is repealed and **readopted to read:**

Commented [KRS1]: Due to extensive reorganization of this section--repeal and readopt entire section. Any wording underlined and bold or in brackets will be edited per drafting manual prior to going out to Law and are here just for comparison and ease of reading the initial draft.

3 AAC 305.345. Written or electronic orders for shipments subject to a package store shipping endorsement. (a) A package store licensee with a shipping endorsement issued under AS 04.09.460 **[OR A HOLDER OF A MANUFACTURER DIRECT SHIPMENT LICENSE UNDER AS 04.09.370]** may sell alcoholic beverages in response to a written or electronic order.

(b) The licensee shall verify the age of the person submitting **the order by**

Commented [KRS2]: Rewritten to include traditional age verification and internet based age and identification verification

(1) retaining the original, a clear photocopy, or an electronic copy of one of the following documents that bears the purchaser's signature and shows by date of birth or statement of age that the purchaser is at least 21 years of age:

(A) valid government-issued photographic identification from any state;

(B) a tribal identification card, issued by a federally recognized tribe that

meets the following criteria:

(i) the identification card has a photograph, a signature, and a date of birth; and

(ii) the identification card has security features as identified in AS 28.15.111(a)(4); or

(C) a foreign or domestic passport; or

(2) use of an internet age and identification verification service **approved by the director.** Approved internet based age and identification verification services are located on the Alcohol and Marijuana Control Office's website at

<https://www.commerce.alaska.gov/web/amco/>. A licensee using an internet age and identification verification service to verify the age of the purchaser shall retain a clear photocopy, or an electronic copy of one of the identification documents described under 3 AAC 305.345(b)(1).

(c) Alcoholic beverages may be sold in response to a written or electronic order only if the order

(1) is signed and dated by the purchaser;

(2) describes in reasonable detail the type and quantity of alcoholic beverages being ordered;

(3) refers by number to the purchaser's proof-of-age document required **by (b) of** this section;

(4) bears a signature reasonably determined by the licensee to match that on the proof-of-age document;

(5) states the physical residence address of the purchaser so that it is sufficient for the licensee to determine whether the zip code of the purchaser is within an area that has restricted the sale, importation, or possession of alcoholic beverages under AS 04.11.491;

(6) includes the community delivery site's physical address if delivery is at a community delivery site designated under AS 04.11.491(f); and

Commented [KRS3]: The internet age/id service is 'approved by the director' . This is for board discussion if the board wishes to keep or remove.

Commented [KRS4]: (b) requires both methods (traditional and internet based service) to retain proof of age document with 'number'.

(7) is entered into the written and electronic order database established under AS 04.06.095 if the alcoholic beverages are to be shipped to an area that has restricted the sale of alcoholic beverages under AS 04.11.491(a)(1), (2), or (3) or AS 04.11.491(b)(1) or (2); an order subject to this paragraph may not be for an amount of alcoholic beverages that would exceed the amount in a calendar month authorized for the purchaser under AS 04.09.460(e) as indicated in the database.

(d) A written or electronic order, may be modified by the licensee not later than five working days after receipt of the written or electronic order if the modification is in accordance with an oral or written communication from the purchaser; if a modification is made, the licensee shall note on the original order the date of modification and the manner in which the modification was requested by the purchaser; alcoholic beverages shipped in response to a written or electronic order must be packaged and shipped within five working days after receipt of the initial written or electronic order by the licensee or the licensee's agent or employee;

(e) Notwithstanding (d), a written or electronic order that is required under AS 04.09.460(e) OR AS 04.09.370 to be entered into the written or electronic order database established under AS 04.06.095 may not be modified after it is entered into the database; a licensee shall calculate whether alcoholic beverages may be shipped to a purchaser under AS 04.09.460(e) by using the date that the order is entered into the database to determine if the amount ordered, combined with the amount already shipped in a calendar month to the purchaser, exceeds the amount authorized under AS 04.09.460(e) as indicated in the database; if the amount ordered under this paragraph

Commented [KRS5]: Database requires id number not name of proof of age verification service . Also required-- first and last name of purchaser and purchasers residence address.

(1) does not exceed the amount authorized under AS 04.09.460(e), alcoholic beverages shipped in response to the written order must be packaged and shipped within five working days after receipt of the written order by the licensee or the licensee's agent or employee; or

(2) exceeds the amount authorized under AS04.09.460(e), the licensee shall

(A) hold the order for up to 72 hours and reenter it into the database for the next month as a new order; or

(B) return the order to the purchaser unfilled if the licensee cannot reenter the order as a new order within 72 hours after receipt.

(f) In response to a written or electronic order, a licensee

(1) shall provide written or electronic information to the purchaser on fetal alcohol spectrum disorder and fetal alcohol effects resulting from a woman's consumption of alcohol during pregnancy;

Commented [KRS6]: Fasd Info --intent is to provide a link on amco website to SOA dept of health FASD informational page--<https://health.alaska.gov/osmap/Pages/fasd.aspx>

(2) may not package or deliver alcoholic beverages, or enter a written order into the written order database established under AS04.06.095, until the licensee has received full payment for the order at the licensed premises;

(3) may personally deliver alcoholic beverages on the licensed premises to the purchaser or to an individual who may legally possess alcoholic beverages and who is specifically authorized in the order to receive the purchase and deliver the alcoholic beverages to the purchaser; to verify the identity of the purchaser or the individual specifically authorized in the written order to receive the purchase, the licensee shall require the purchaser or the

Commented [KS7]: Add 'on the licensed premises' back in to remove contradiction and for board discussion.

authorized individual to present an original of one of the forms of identification listed in (b) of this section;

(4) unless subject to paragraph (3) of this subsection, shall ship the alcoholic beverages by a common carrier approved under AS 04.09.750 to the purchaser; under this paragraph, if the order is to be shipped to a community that has specified a delivery site under AS 04.11.491(f) the order must be shipped to the purchaser at that delivery site address; or

(5) shall package an order that is delivered or shipped under this subsection in a shipping container that

(A) bears labelling that

Commented [KRS8]: Labelling is simplified.

(i) identifies the licensee;

(ii) shows the written order number assigned under (i) of this section; and

(iii) contains the words "alcoholic beverages" [IN LETTERS AT LEAST TWO INCHES HIGH AND DRAWN IN LINES ONE-QUARTER INCH WIDE];

(B) contains one copy of the sales invoice which must be enclosed in a sealed envelope securely attached to the shipping container; the sales invoice

(i) must be legibly handwritten or typed;

(ii) must be prepared by the licensee, licensee's agent, or employee; and

(iii) must show the description, quantity, unit price, extended price, and total value of the alcoholic beverages in the container;

(iv) may be retained by a municipality if the container is addressed to a delivery site in a municipality that imposes a sales and use tax on alcoholic beverages under AS 04.21.010(c)(4), or controls the quantity that may be imported under AS 04.21.010(a)(1).

(g) A community delivery site must be secure from unauthorized access, reasonably located for access by the public, clean and heated, and controlled by the local governing body to assure protection of orders for purchasers. The site must be open for pick-up by purchasers at least once a week, for three hours between 8:00 a.m. and 8:00p.m. Alcoholic beverages may be claimed from the community delivery site only by the purchaser named on the container. The purchaser shall sign for the order on a form stating that the beverages are not for resale. The local governing body may impose reasonable storage and handling fees chargeable to the purchaser and may label or mark alcoholic beverage containers processed through the community delivery site. Upon approval of a community delivery site, the board will notify licensees that written or electronic orders for shipment into the community may only be shipped to the community delivery site.

(h) The board will maintain a list of persons who, under AS 04.16.200, are convicted after October 24, 1987, of a violation of AS 04.11.010 and will provide this list to package store [AND MANUFACTURER DIRECT SHIPMENT] licensees. A licensee who receives the list may not sell alcoholic beverages by written or electronic order to a person whose name appears on it until the board gives written notice to the licensee that sales to that person are no longer prohibited.

(i) For each written order, an endorsement holder shall keep a hard copy or electronic file

of the documents pertaining to that written order and shall keep them on file with the purchaser's proof-of-age document. The licensee shall retain order documents for at least one year after the order is delivered. The licensee shall maintain a log of written orders in a manner that

Commented [KRS9]: Wine club at .350(c) allows for a hard copy or electronic copy of documents. MDL allows for hard file or electronic copy --for consistency also allowing shipping endorsement holders this.

(1) allows cross-reference to the documents for each order;

(2) assigns an order number to each written order; and

(3) shows, for each order,

(A) the purchaser's name;

(B) dates the order was received, modified, and shipped or delivered; and

(C) the address to which shipment was made.

(j) A licensee who sells alcoholic beverages in response to written or electronic orders

(1) shall promptly notify the board of

(A) a person who places one or more written orders in a single week for,

in the aggregate,

(i) more than 36 gallons of brewed beverages;

(ii) more than 12 cases of wine; or

(iii) more than 36 liters of distilled spirits; and

(B) a customer who engages in a regular practice of ordering alcoholic beverages in similarly large quantities;

(2) shall, if the alcoholic beverages are to be shipped to an area that has restricted the sale of alcoholic beverages under AS 04.11.491(a)(1), (2), or (3) or (b)(1) or (2),

(A) enter a written or electronic order into the written order database established under AS 04.06.095 not more than 24 hours after receiving full payment; and

(B) notify the board not more than 24 hours after calculating that the amount ordered exceeds the amount authorized under AS 04.09.460 as indicated in the database when added to the amount already shipped in a calendar month to the purchaser.

(k) If alcoholic beverages are not delivered to the purchaser personally on the licensed premises, title to the alcoholic beverages passes from the licensee to the purchaser at the time the alcoholic beverages are packed and addressed to the purchaser and payment is received, and these actions are sufficient to constitute a sale on the licensed premises.

(l) The licensee may not ship alcoholic beverages

- (1) to a person other than the purchaser;
- (2) in response to a telephonic order; or
- (3) by taxicab.

(m) After a local option municipality submits written notification to the board that the municipality has imposed a sales and use tax on alcoholic beverages under AS 04.21.010(c)(4), a licensee that sells alcoholic beverages by written solicitation under AS 04.09.460 may not ship or deliver alcoholic beverages to that municipality until payment for the taxes is collected at the licensed premises in accordance with the ordinances of that municipality. The licensee shall remit the payments of taxes to the municipality for which the tax was collected. (Eff. 1/1/2024, Register 248; am ___/___/___, Register ___)

Authority:	AS 04.06.090	[AS 04.09.370]	AS 04.09.480
	AS 04.06.100	AS 04.09.460	AS 04.09.490
	AS 04.09.230	AS 04.09.470	

3 AAC 305 is amended by adding a new section to read:

3 AAC 305.347. Shipments from a manufacturer direct shipment licensee. (a) A holder of a manufacturer direct shipment license issued under AS 04.09.370 may sell alcoholic beverages in response to a written, telephonic, or electronic order.

(b) Manufacturer direct shipment licensees shall verify the age of the person submitting the order and the named recipient of the shipment, if not the same person as the person submitting the order by

Commented [KRS10]: MDSL must verify age of both purchaser and recipient (if different). This requirement surfaces often in this draft.

(1) retaining the original, a clear photocopy, or an electronic copy of one of the following documents that bears the person's signature and shows by date of birth or statement of age that the person is at least 21 years of age:

Commented [KRS11]: Rewritten to include traditional age verification and internet based age and identification verification

(A) valid government-issued photographic identification from any state;

(B) a tribal identification card, issued by a federally recognized tribe that meets the following criteria:

(i) the identification card has a photograph, a signature, and a date of birth; and

(ii) the identification card has security features as identified in AS 28.15.111(a)(4); or

(C) a foreign or domestic passport; or

(2) use of an internet age and identification verification service approved by the director. Approved internet based age and identification verification services are located on the Alcohol and Marijuana Control Office's website at <https://www.commerce.alaska.gov/web/amco/>.

Commented [KRS12]: The 'approved by the director' services are for Board discussion.

(c) Alcoholic beverages may be sold in response to a written, telephonic, or electronic order only if the order

(1) describes in reasonable detail the type and quantity of alcoholic beverages being ordered;

(2) does not exceed the limits of AS 04.09.370(2)(e); and

(3) states the physical residence address of the purchaser and the recipient, if not the same person as the person submitting the order, so that it is sufficient for the licensee to determine whether the zip code of the purchaser or the zip codes of the purchaser and the recipient are within an area that has restricted the sale, importation, or possession of alcoholic beverages under AS 04.11.491.

Commented [KRS13]: Neither 'purchaser' or 'recipient' residence address can be in local option area....

(d) In response to a written, telephonic, or electronic order, a licensee

(1) shall provide written or electronic information to the person submitting the order and the named recipient of the alcoholic beverages on fetal alcohol spectrum disorder and fetal alcohol effects resulting from a woman's consumption of alcohol during pregnancy;

Commented [KS14]: Fasd Info --intent is to provide a link on amco website to SOA dept of health FASD informational page--<https://health.alaska.gov/osmap/Pages/fasd.aspx>

(2) may not package or deliver alcoholic beverages until the licensee has received full payment for the order at the licensed premises;

(3) shall ship the alcoholic beverages by a common carrier approved under AS 04.09.750; and

(4) shall package an order that is delivered or shipped under this subsection in a shipping container that

(A) bears labelling that

(i) identifies the licensee; and

(ii) contains the words "alcoholic beverages"

~~(d) The board will maintain a list of persons who, under AS 04.16.200, are convicted after October 24, 1987, of a violation of AS 04.11.010 and will provide this list to manufacturer direct shipment licensees. A licensee who receives the list may not sell or deliver alcoholic beverages by written, electronic, or telephonic order to a person whose name appears on it until the board gives written notice to the licensee that sales to that person are no longer prohibited.~~

(e) For each order the licensee shall keep a hard copy or electronic file of the documents pertaining to that order along with the purchaser's and the recipient's, if not the same person as the person submitting the order, proof-of-age document, or proof of age internet based age and identification verification service. The licensee shall retain order documents for at least two years after the order is delivered. The licensee shall maintain a log of orders in a manner that

(1) allows cross-reference to the documents for each order;

(2) assigns an order number to each order; and

(3) shows, for each order,

(A) the purchaser's name and the recipient's name if different from the

Commented [KS15]: This requirement is removed. Upon Enforcement consultation- this list only pertains to communities with a local option and so MDSL does not need to refer to this list.

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COMMERCE, COMMUNITY, AND EC. DEV.

purchaser;

(B) dates the order was received, paid for, modified, and shipped or delivered; and

(C) the address to which shipment was made. (Eff. ____/____/____, Register _____)

Authority: AS 04.06.090 AS 04.06.100 AS 04.09.370

3 AAC 305.350(a) is amended to read:

3 AAC 305.350. Wine clubs. (a) A package store licensee with a shipping endorsement may enter into a standing written or electronic shipment order agreement with a purchaser for periodic shipment of wine of the licensee's choice to the purchaser if

Commented [KRS16]: Entire section for wine clubs left for ease of reading...

(1) the endorsement holder retains the original, a clear photocopy, or an electronic copy of the proof-of-age document in accordance with **3 AAC 305.345(c)** [3 AAC 305.345(B)];

(2) the agreement is signed and dated by the purchaser and contains the information required for written orders under **3 AAC 305.345(d)** [3 AAC 305.345(C)]; and

(3) the agreement requires that the endorsement holder receives payment for the wine not fewer than five working days before the date of shipment and allows the endorsement holder or purchaser to terminate the agreement by giving five days' written notice of termination.

3 AAC 305.350(b) is amended to read:

(b) A licensee shall consult the database maintained by the board under AS 04.06.095 in the manner required under AS 04.09.460(e) before shipping wine to an area that has restricted the sale of alcoholic beverages under AS 04.11.491(a)(1), (2), or (3) or (b)(1) or (2). Shipment of the wine must be in compliance with applicable provisions of **3 AAC 305.345(e) and (f) [3 AAC 305.345(D) AND (E)]**.

(c) For each standing shipment order agreement, an endorsement holder shall keep a hard copy or electronic file that contains the agreement and a copy of all documents required under this section. The endorsement holder shall retain the agreement file for at least one year after termination of the agreement. The endorsement holder shall maintain a log of monthly shipments of wine in a manner that

(1) allows cross-reference to the documents for each order;

(2) assigns an order number to each shipment; and

(3) for each order, shows the date payment for the shipment was received, the date the order was shipped, and the address to which the shipment was made.

(d) If an agreement under this section requires the endorsement holder to ship wine to an area that has restricted the sale of alcoholic beverages under AS 04.11.491(a)(1), (2), or (3) or (b)(1) or (2), the licensee shall enter a written order not later than 24 hours after receiving full payment into the written order database established under AS 04.06.095.

(e) After a municipality submits written notification to the board that the municipality has imposed a sales and use tax on alcoholic beverages under AS 04.21.010(c)(4), an endorsement holder may not ship wine under a standing shipment order agreement to that municipality until payment for the taxes is collected at the licensed premises in accordance with the ordinances of

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that municipality. The licensee shall remit the payments of taxes to the municipality for which the tax was collected. (Eff. 1/1/2024, Register 248; am ____/____/_____, Register _____)

Authority: AS 04.06.090 AS 04.09.460 AS 04.09.480
AS 04.06.100 AS 04.09.470 AS 04.09.490
AS 04.09.230

3 AAC 305.810(a) is amended to read:

3 AAC 305.810. Recordkeeping requirements. (a) Except for the holder of a manufacturer direct shipment license under AS 04.09.370, a [A] licensee shall retain records of the sales, purchases, and expenses of the business for **at least one year**, including records sufficient to show the license was actively exercised for at least 240 hours during each of the two preceding calendar years as set out in AS 04.11.330(a)(3).

(Eff. 1/1/2024, Register 248; am ____/____/_____, Register _____)

Authority: AS 04.06.090 AS 04.06.100 AS 04.11.330

From: [Sally Jefferson](#)
To: [Serezhenkov, Kristina R \(CED\)](#)
Cc: [CED AMCO REGS \(CED sponsored\)](#); [Sawyer, Jane Preston \(CED\)](#); [Wilson, Joan M \(CED\)](#); ashleyreed@gci.net
Subject: RE: Title 4 Regulations- Alaska Draft Amending Manufacturer Direct Shipment Licensee requirements for review
Date: Wednesday, January 17, 2024 1:26:17 PM
Attachments: [image001.png](#)

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On behalf of Wine Institute, thank you for the opportunity to review and provide feedback on the draft rule changes affecting manufacturer direct shippers.

As proposed in new section AAC 305.347, Shipments from a manufacturer direct shipment licensee, wineries and other eligible manufacturers would be able to comply with these provisions in order to make regulated tax-paid and limited direct to consumer shipments that are in accordance with the Title 4 Rewrite statutory requirements for participation and compliance with this new regulatory program.

Of the issues we have raised regarding the existing rules, the most serious concerns for our members deal with being unable to comply with any direct shipment requirements that require obtaining and retaining copies of a purchaser's (and recipient's, if different) driver's license information and/or other sensitive personally identifiable information due to the significant liability risks associated with maintaining and protecting this sensitive customer data. We greatly appreciate that altogether the proposed changes for Manufacturer Direct Shipment licensees would result in bringing the current rules into line with best practices for protecting personally sensitive information while utilizing age verification services for ensuring that sales are made only to adults as well as allow such licensees to meet all of the other direct shipping requirements as provided in the statute.

Thank you for your serious consideration of our comments and concerns and your willingness to address them as a part of this regulatory project. If you have any questions and/or would like to discuss, please let Ashley Reed and me know.

Sincerely,

Sally Jefferson

Sally H. Jefferson
Director, Western States
WINE INSTITUTE
(917) 543-2678
sjefferson@wineinstitute.org

CHAPTER 7

436.1701	Selling or furnishing alcoholic liquor to minor; failure to make diligent inquiry; violation as misdemeanor; penalty; signs; consumption of alcoholic liquor as cause of death or injury; felony; enforcement against licensee; consent of parent or guardian in undercover operation; defense in action for violation; report; use of security identification device; definitions.
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Sec. 701.

REFER TO 436.1701(11)(b)(ii) on the second page of this document.

- (1) A person shall not sell or furnish alcoholic liquor to a minor. Except as otherwise provided in subsection (2) and subject to subsections (4), (5), and (6), a person who knowingly sells or furnishes alcoholic liquor to a minor, or who fails to make diligent inquiry as to whether the individual is a minor, is guilty of a misdemeanor. A retail licensee or a retail licensee's clerk, agent, or employee who violates this subsection shall be punished in the manner provided for licensees in section 909 except that if the violation is the result of an undercover operation in which the minor received alcoholic liquor under the direction of the state police, the commission, or a local police agency as part of an enforcement action, the retail licensee's clerk, agent, or employee is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than \$100.00. Except as otherwise provided in subsection (2), an individual who is not a retail licensee or a retail licensee's clerk, agent, or employee and who violates this subsection is guilty of a misdemeanor punishable by a fine of not more than \$1,000.00 and imprisonment for not more than 60 days for a first offense, a fine of not more than \$2,500.00 and imprisonment for not more than 90 days for a second or subsequent offense, and may be ordered to perform community service. A suitable sign describing the content of this section and the penalties for its violation must be posted in a conspicuous place in each room where alcoholic liquor is sold. The commission shall approve and furnish a sign under this section.
- (2) An individual who is not a retail licensee or the retail licensee's clerk, agent, or employee and who violates subsection (1) is guilty of a felony, punishable by imprisonment for not more than 10 years or a fine of not more than \$5,000.00, or both, if the subsequent consumption of the alcoholic liquor by the minor is a direct and substantial cause of the minor's death or an accidental injury that causes the minor's death.
- (3) If a violation occurs in an establishment that is licensed by the commission for consumption of alcoholic liquor on the licensed premises, a person who is a licensee or the clerk, agent, or employee of a licensee must not be charged with a violation of subsection (1) or section 801(1) unless the licensee or the clerk, agent, or employee of the licensee knew or should have reasonably known with the exercise of due diligence that a minor possessed or consumed alcoholic liquor on the licensed premises and the licensee or clerk, agent, or employee of the licensee failed to take immediate corrective action.
- (4) If the enforcing agency involved in the violation is the state police or a local police agency, a licensee must not be charged with a violation of subsection (1) or section 801(1) unless all of the following occur, if applicable:
 - (a) Enforcement action is taken against the minor who purchased or attempted to purchase, consumed or attempted to consume, or possessed or attempted to possess alcoholic liquor.
 - (b) Enforcement action is taken under this section against the individual 21 years of age or older who is not the retail licensee or the retail licensee's clerk, agent, or employee who sold or furnished the alcoholic liquor to the minor.
 - (c) Enforcement action under this section is taken against the clerk, agent, or employee who directly sold or furnished alcoholic liquor to the minor.
- (5) If the enforcing agency is the commission and an appearance ticket or civil infraction citation has not been issued, then the commission shall recommend to a local law enforcement agency that enforcement action be taken against a violator of this section or section 703 who is not a licensee. However, subsection (4) does not apply if the minor against whom enforcement action is taken under section 703, the clerk, agent, or employee of the licensee who directly sold or furnished alcoholic liquor to the minor, or the individual 21 years of age or older who sold or furnished alcoholic liquor to the minor is not alive or is not present in this state at the time the licensee is charged. Subsection (4)(a) does not apply under either of the following circumstances:

- (a) The violation of subsection (1) is the result of an undercover operation in which the minor purchased or received alcoholic liquor under the direction of the person's employer and with the prior approval of the local prosecutor's office as part of an employer-sponsored internal enforcement action.
 - (b) The violation of subsection (1) is the result of an undercover operation in which the minor purchased or received alcoholic liquor under the direction of the state police, the commission, or a local police agency as part of an enforcement action.
- (6) Any initial or contemporaneous purchase or receipt of alcoholic liquor by the minor under subsection (5)(a) or (b) must have been under the direction of the state police, the commission, or the local police agency and must have been part of the undercover operation.
- (7) If a minor participates in an undercover operation in which the minor is to purchase or receive alcoholic liquor under the supervision of a law enforcement agency, his or her parents or legal guardian shall consent to the participation if the minor is less than 18 years of age.
- (8) In an action for the violation of this section, proof that the defendant or the defendant's agent or employee demanded and was shown, before furnishing alcoholic liquor to a minor, a motor vehicle operator's or chauffeur's license, a military identification card, or other bona fide documentary evidence of the age and identity of that person, is a defense to an action brought under this section.
- (9) The commission shall provide, on an annual basis, a written report to the department of state police as to the number of actions heard by the commission involving violations of this section and section 801(1). The commission shall include in the report the disposition of each action and figures representing all of the following categories:
 - (a) Decoy operations.
 - (b) Off-premises violations.
 - (c) On-premises violations.
 - (d) Repeat offenses within the 3 years preceding the date of the report.
- (10) Subsection (11)(b)(ii) does not impose a duty or obligation on the secretary of state that is not otherwise required by law.
- (11) As used in this section:
 - (a) "Corrective action" means action taken by a licensee or a clerk, agent, or employee of a licensee designed to prevent a minor from further possessing or consuming alcoholic liquor on the licensed premises. Corrective action includes, but is not limited to, contacting a law enforcement agency and ejecting the minor and any other person suspected of aiding and abetting the minor.
 - (b) "Diligent inquiry" means a diligent good-faith effort to determine the age of an individual, which includes at least 1 of the following:
 - (i) An examination of an official Michigan operator's or chauffeur's license, an official Michigan personal identification card, a military identification card, or any other bona fide picture identification that establishes the identity and age of the individual.
 - (ii) Use of a secure identity verification device if all of the following conditions are met:
 - (A) The electronic scan of a biometric of the individual is referenced against any form of picture identification described in subparagraph (i).
 - (B) The authenticity of the picture identification was previously verified by an electronic authentication process.
 - (C) The identity of the individual was previously verified through a commercially available knowledge-based electronic authentication process.
 - (D) The authenticated picture identification was securely linked to biometrics contemporaneously collected from the individual.
 - (c) "Retail licensee" means a person licensed to sell alcoholic liquor at retail for consumption on or off the licensed premises. "Secure identity verification device" means a commercial device that instantly verifies the identity and age of an individual by an electronic scan of a biometric of the individual.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998; -- Am. 2002, Act 725, Imd. Eff. Dec. 30, 2002; -- Am. 2006, Act 682, Imd. Eff. Jan. 10, 2007; -- Am. 2010, Act 266, Eff. June 30, 2011; -- Am. 2019, Act 131, Imd. Eff. Nov. 21, 2019; -- Am. 2020, Act 78, Imd. Eff. Apr. 2, 2020; -- Am. 2020, Act 377, Eff. Oct. 1, 2021