

Legislative Analysis



LIQUOR CODE AMENDMENTS

Phone: (517) 373-8080
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House Bill 5341 (H-1) as reported from committee
House Bill 5342 (H-1) as reported
House Bill 5343 (H-1) as reported
House Bill 5344 (H-1) as reported
Sponsor: Rep. Pauline Wendzel

Analysis available at
<http://www.legislature.mi.gov>

House Bill 5345 (H-1) as reported
House Bill 5346 (H-1) as reported
Sponsor: Rep. Jason Wentworth

House Bill 5347 (H-1) as reported
House Bill 5348 (H-1) as reported
House Bill 5400 as reported
Sponsor: Rep. Alex Garza

House Bill 5351 (H-1) as reported
House Bill 5352 (H-2) as reported
Sponsor: Rep. Graham Filler

House Bill 5349 (H-1) as reported
House Bill 5350 (H-1) as reported
Sponsor: Rep. Matt Hall

House Bill 5353 (H-2) as reported
House Bill 5354 (H-1) as reported
House Bill 5355 (H-1) as reported
Sponsor: Rep. Sara Cambensy

1st Committee: Regulatory Reform
2nd Committee: Ways and Means
Complete to 2-19-20

SUMMARY:

The bills would amend various sections of the Michigan Liquor Control Code to revise provisions concerning such things as tax payment frequency, brand extensions, beer festival special licenses, and beer in growlers, among others. They are described in further detail below.

House Bill 5341 would amend a section dealing with brewpub licensure to revise a citation to reflect a change in subsection numbering that would be made by HB 5355 (described below).

MCL 436.1407

House Bill 5342 would add a definition for the term *facilitate*. Currently, the code allows a retailer holding a specially designated merchant (*SDM*) license or a retailer holding a specially designated distributor (*SDD*) license to use a *third-party facilitator service* by means of the internet or a mobile application to facilitate the sale of beer or wine or spirits, as applicable, to be delivered to the home or designated location of a consumer. The code also allows a third-party facilitator to deliver beer and wine to a consumer on behalf of the *SDM* or spirits on behalf of the *SDD*, if it verifies that the individual accepting delivery is at least 21 years old and other conditions are met.

An *SDM* license allows the sale of beer and wine for off-premises consumption.

An *SDD* license allows the sale of spirits and mixed spirit drink in the original package for off-premises consumption. (“Spirits” refers to such products as whiskey, gin, and vodka.)

Third party facilitator service means a person licensed by the Liquor Control Commission (LCC) to do any of the following:

- *Facilitate* the sale of beer, wine, or spirits to a consumer on behalf of a retailer that holds an SDM or SDD license, respectively, located in Michigan.
- Deliver beer, wine, or spirits to a consumer on behalf of a retailer that holds an SDM or SDD license, respectively, located in Michigan.

Under the bill, *facilitate* would mean advertising on behalf of a retailer, by means of the internet or mobile application, and pursuant to a written or oral agreement, the brands and prices of beer, wine, or spirits products sold by a retailer and one or more of the following:

- Assisting the retailer, in any manner, in the arrangement of delivery as allowed in section 203.
- Assisting the retailer, in any manner, in the processing of payment by the consumer for the beer, wine, or spirits.
- Transmitting customer information to the retailer.

The term would not include web designing, operating an internet search engine, or publishing an internet version of a newspaper.

The bill would also delete the definition of “qualified micro brewer” and section 203(19), which pertains to microbrewers. The deleted provisions would be placed into a new section of the act by HB 5343 (described below).

MCL 436.1203

House Bill 5343 would add section 203a to the code to incorporate, with some revisions, the provisions deleted from section 203 by HB 5342 (described above) regarding the sale and delivery of beer to a retailer by a micro brewer. The bill would apply the provisions both to a micro brewer and to an out-of-state entity that is the substantial equivalent of a micro brewer (both here called “micro brewer”). Substantive changes to the provisions include the following:

- The bill would increase the total barrels of beer per year that a micro brewer may sell and deliver to a retailer from 1,000 barrels to 2,000 barrels. All brands and labels of a micro brewer, whether sold to a wholesaler or a retailer in this state or outside of this state, would have to be combined in determining the yearly total, but sales to consumers on the licensed premises of the micro brewer would not be included.
- The bill would add compliance with the state bottle deposit law as a condition that a micro brewer must meet.
- The bill would add legislative findings and purpose clauses pertaining to preservation of the three-tier system, which provides the framework for the regulation of alcoholic beverages.

Proposed MCL 436.1203a

House Bill 5344 would revise a provision pertaining to refunds a manufacturer may make to a retailer to refer to section 203a of the code, instead of section 203, to reflect the relocation of certain provisions by HB 5343 (described above).

MCL 436.1609c

House Bill 5345 would amend provisions related to the tax levied under the act on beer manufactured or sold in this state. Currently, the tax cannot be required to be paid more frequently than monthly. Under the bill, beginning March 15, 2020, the LCC could not require payment more frequently than quarterly.

The bill would also revise the threshold for claiming a credit under the act that is based on how much beer the brewer manufactures in a tax year. Currently, a brewer can claim a credit against the beer tax against its first 30,000 barrels of production if it does not manufacture more than 50,000 barrels of beer during the tax year in which the credit is claimed. The bill would increase this amount to 60,000 barrels of beer during the relevant tax year.

MCL 436.1409

House Bill 5346 would amend provisions related to the tax levied under the act on wine and mixed spirit drink sold in this state. Currently, the tax cannot be required to be paid more frequently than monthly. Under the bill, beginning March 15, 2020, the LCC could not require payment more frequently than quarterly.

MCL 436.1301

House Bill 5347 would revise provisions governing the issuance of a special license to an organization conducting a beer festival. Currently, such a special license is limited to allowing up to six events per calendar year. The bill would retain this provision, but stipulate that a beer festival that spans two or more consecutive days is a single event.

Currently, the holder of a special license can buy a quantity of beer as determined appropriate by the LCC directly from any licensed brewpub for consumption at the licensed event. The bill would remove the determination of appropriateness by the LCC. The bill would also add micro brewers eligible to self-distribute to the beer festival and wholesalers as entities from which the license holder could directly buy beer for consumption at the event.

Under the bill, beer dispensed to consumers for showcasing beer at a beer festival would be considered a sample, and the holder of a beer festival special license could offer it for free.

Finally, the bill would allow a member of an organization that holds a beer festival special license to serve beer at the event as long as he or she was at least 18 years of age.

MCL 436.1526

House Bill 5348 would modify provisions concerning salesperson license accreditation programs and rescind a rule whose provisions duplicate those contained in a section of the code.

Currently, to be approved by the LCC, a salesperson license accreditation program's curriculum must include an understanding of certain specified sections of the Liquor Control Code and LCC rules and orders, including those dealing with advertising and expenditures.

Among the laws and rules included is R 436.1319 of the Michigan Administrative Code, which generally prohibits cooperative advertising (as, for instance, advertising jointly funded by a wholesaler and a retailer, among other examples). The bill would remove this rule from the curriculum requirements and instead include section 610d of the code, which also prohibits cooperative advertising, with the same prohibitions and exceptions.

The bill would also rescind R 436.1319 of the Michigan Administrative Code.

MCL 436.1502

House Bill 5349 would amend provisions concerning the assignment of brand extensions by a beer manufacturer to a wholesaler.

Under current law, a brand extension is not considered a new or different brand, and a manufacturer or outstate seller of beer must assign a brand extension to the wholesaler that was granted the exclusive sales territory to the underlying brand.

However, the code allows for different brand extension assignments that were made during specified windows of time. The code also provides that, beginning July 1, 1995, a manufacturer or outstate seller of beer who acquires the rights to assign brands of another manufacturer or seller does not have to assign a new brand extension to the wholesaler with the exclusive sales territory for the underlying brand. The bill would remove the provisions described in this paragraph.

Under the bill, the requirement that a brand extension must be assigned to the appointed wholesaler of the underlying brand would not apply if, before October 1, 2019, a successor manufacturer or successor outstate seller of beer had assigned a brand extension to a wholesaler that was not the appointed wholesaler for the underlying brand.

MCL 436.1401

House Bill 5350 would make amendments similar to those proposed by HB 5349 (described above), but dealing with wine and mixed spirit drinks rather than beer.

That is, the bill would remove current provisions of law regarding brand assignments by a manufacturer or outstate seller who acquires the rights to assign brands of another manufacturer or seller.

Instead, under the bill, for wine and mixed spirit drinks, the requirement that a brand extension must be assigned to the appointed wholesaler of the underlying brand would not apply if, before October 1, 2019, a successor manufacturer or successor outstate seller had assigned a brand extension to a wholesaler that was not the appointed wholesaler for the underlying brand.

MCL 436.1307

House Bill 5351 would add a definition for the phrase “successor to a supplier that continues in business” for purposes of the code. Specifically, the phrase would mean a brewer, outstate seller of beer, master distributor, wine maker, or outstate seller of wine that acquires a brand or brands from another supplier and remains in business after it acquires that brand or brands. (A master distributor is generally defined in the code as a wholesaler that acts in the same or similar capacity as a brewer, wine maker, outstate seller of wine, or outstate seller of beer for a brand or brands of beer or wine to other wholesalers on a regular basis in the normal course of business.)

The newly defined term (“successor to a supplier that continues in business”) is used in sections 305 and 403 of the code, which regulate the business relations between wholesalers and suppliers of wine and of beer, respectively.

MCL 436.1307

House Bill 5352 would add new section 602 to the code to provide that a beer or wine manufacturer’s termination, cancellation, nonrenewal, or discontinuation of an agreement with a wholesaler is void if the manufacturer sells the brand or brands of beer or wine, as applicable, subject to the termination within 24 months after the effective date of the written notice of the termination provided to the wholesaler as required by the code.

Proposed MCL 436.1602

House Bill 5353 would amend provisions governing the sale of beer in growlers for consumption off the premises by the holder of an SDM license to exempt the following licensees from the requirement that the beer to be dispensed must have received a registration number from the LCC and have been approved for sale by the LCC:

- A brewpub, described as where beer manufactured on the premises may be sold for consumption on or off the premises by certain on-premises licensees, but only as to beer that the brewpub produces.
- A micro brewer or brewer, described as where beer manufactured by the licensee may be sold in an approved tasting room under section 536 to a consumer for consumption on or off the manufacturing premises.

MCL 436.1537

House Bill 5354 would amend requirements for the sale of beer by brewpubs.

Currently, a brewpub cannot sell beer in Michigan unless it provides a label for each brand or type of beer sold that truthfully describes the content of each container and provides proof that a valid “application for and certification/exemption of label/bottle approval” has been obtained and is unrevoked under federal malt beverage labeling requirements.

The bill would delete this requirement.

MCL 436.1405

House Bill 5355 would amend section 609a of the code, which among other things requires a manufacturer or wholesaler to file with the LCC a schedule of net cash prices for its brands of beer.

The bill would provide that if a person sells beer that has not received a registration number from the LCC in violation of R 436.1611(1)(d) of the Michigan Administrative Code and a wholesaler files a schedule of net cash prices as required by section 609a, neither the wholesaler nor a retailer would be considered to have violated R 436.1611(1)(d). [That rule prohibits the sale of beer unless the beer has received a registration number from the LCC and has been approved by the LCC for sale.]

Additionally, the bill would exempt brewpubs from the application of section 609a of the code.

Finally, the bill would prohibit the LCC from implementing or enforcing R 436.1611(1)(c) or R 436.1611(1)(d) for products manufactured by a brewer and for products that a micro brewer or brewer sells exclusively at its tasting room or at a beer festival. [R 436.1611(1)(c) requires proof of compliance with federal labeling requirements, as described regarding HB 5354, above.]

MCL 436.1609a

House Bill 5400 would revise the definition of “micro brewer” to refer to section 203a of the code, instead of section 203, to reflect the relocation of certain provisions by HB 5343 (described above).

MCL 436.1109

Tie-bars: All of the bills are tie-barred to one another, which means that none of the bills could take effect unless all of them were enacted.

FISCAL IMPACT:

House Bills 5341, 5343, 5348, 5349, 5350, 5351, 5352, 5353, 5354, 5355, and 5400 would not have a significant fiscal impact on the Department of Licensing and Regulatory Affairs (LARA) or any other unit of state or local government.

House Bills 5345 and 5346 would require that taxpayers remit beer and wine taxes no more frequently than on a quarterly basis. The only fiscal impact as a result would be forgone interest, which is likely to be minimal. In addition, HB 5345 would increase the production threshold to qualify for the small brewer’s credit, although it is unlikely to have any fiscal impact. The closest brewery below the threshold produced just under 40,000 barrels in 2018 and was on a similar pace through the first six months of 2019, and the two breweries that currently exceed the limit each produced in excess of 85,000 barrels in 2018. Therefore, increasing the threshold to 60,000 barrels would have no impact.

House Bill 5347 would not be expected to have a significant fiscal impact on LARA. The bill would stipulate that beer festivals spanning two or more consecutive days would be considered one event. Since special licenses are statutorily limited to allow only six events per year, this

could increase the number of days for which the \$25 daily special license fee could be collected. The impact from this change would likely be nominal.

POSITIONS:

Representatives of the following entities testified in support of the bills (2-19-20):

Michigan Brewers Guild

Michigan Beer and Wine Wholesalers Association

The Mackinac Center for Public Policy indicated support for the bills. (1-21-20)

The Round Barn Brewery and Public House indicated support for HB 5343. (2-19-20)

The Ore Dock Brewing Company indicated support for HB 5345. (1-21-20)

Anheuser-Busch indicated opposition to HBs 5349 and 5352. (1-21-20)

The Wine Institute indicated opposition to HBs 5351 and 5352. (1-21-20)

Legislative Analyst: Susan Stutzky
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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.