

Legislative Analysis



LIQUOR CODE AMENDMENTS

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bills 5341 and 5343 as introduced
Sponsor: Rep. Pauline Wendzel

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

House Bills 5345 and 5346 as introduced
Sponsor: Rep. Jason Wentworth

House Bills 5347 and 5348 as introduced
Sponsor: Rep. Alex Garza

House Bills 5351 and 5352 as introduced
Sponsor: Rep. Graham Filler

House Bills 5349 and 5350 as introduced
Sponsor: Rep. Matt Hall

House Bills 5353, 5354, and 5355 as introduced
Sponsor: Rep. Sara Cambensy

Committee: Regulatory Reform
Complete to 1-21-20

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 (below).

MCL 436.1407

House Bill 5343 would add a section regarding the sale and delivery of beer to a retailer by a micro brewer or an out-of-state entity that is the substantial equivalent of a microbrewer (both here called "micro brewer"). Under the bill, a micro brewer could sell and deliver beer to a retailer only if all of the following conditions were met:

- The retailer is not located in a sales territory for which the micro brewer has granted exclusive sales rights to a wholesaler for the sale of any of its brands of beer.
- The beer is sold and delivered by an employee of the micro brewer, not an agent, and transported and delivered using a vehicle owned by the micro brewer.
- The micro brewer is in compliance with applicable state and federal law and regulatory provisions and rules under the act, including those regarding:
 - Employees that sell and deliver beer to retailers.
 - Vehicles used to deliver beer to retailers.
 - Price schedules and temporary price reductions.
 - The bottle deposit law.
- The micro brewer does not sell more than 2,000 barrels of beer per year, determined by combining all of its brands and labels, whether sold to a retailer or wholesaler in this state or outside of this state, but not including sales to consumers on the micro brewer's licensed premises.

Proposed MCL 436.1203a

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 Liquor Control Commission (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 Liquor Control Commission (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 would be considered one 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 the rule (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 for 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 a specially designated merchant (SDM) license to remove a 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.

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 tasking 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

Tie-bars: All of the bills are tie-barred to one another, as well as to HBs 5342 and 5344 and an additional bill that has not yet been introduced. A bill cannot take effect if a bill to which it is tie-barred is not enacted.

FISCAL IMPACT:

House Bills 5341, 5343, 5348, 5349, 5350, 5351, 5352, 5353, 5354, and 5355 would not have significant fiscal impacts 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.

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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.