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Senate Bill 942 (as introduced 5-28-20)
Sponsor: Senator Aric Nesbitt
Committee: Regulatory Reform

Date Completed: 5-28-20

CONTENT

The bill would amend the Michigan Liquor Control Code to do the following:

- **Allow a specially designated distributor to sell to an on-premises licensee an unlimited amount of spirits beginning with the bill's effective date through December 31, 2021.**
- **Beginning after December 31, 2021, increase the current limit of spirits a specially designated distributor may sell to an on-premises licensee, from nine liters during any one month to 225 liters during any 12-month period.**
- **Provide on-premises licensees a 30% discount from uniform prices on alcoholic liquor purchased from the State beginning on the bill's effective date through December 31, 2021.**
- **Allow on-premises licensees to fill and sell qualified containers with beer, wine, mixed spirit drink, or spirits for consumption off the premises under certain conditions.**
- **Allow an on-premises licensee to deliver beer, wine, mixed spirit drink, or spirits to a consumer in Michigan if the licensee met certain requirements.**
- **Allow an on-premises licensee that had written approval from the Michigan Liquor Control Commission (MLCC) to have outdoor service in an outdoor service area to add seating or a bar to that area without the approval of the MLCC or the governing body of the local unit of government in which the licensed premises was located until December 31, 2021.**
- **Allow the governing body of a local unit of government to designate a social district that contained a commons area that could be used by on-premises licensees that obtained a social district permit.**
- **Prescribe rules and regulations pertaining to the use and designation of a social district and its common area.**
- **Require the MLCC to develop an application for a social district permit and charge a fee of \$250 for the permit.**
- **Require a wholesaler to refund or replace beer or wine for a on-premises licensee until the expiration of the state of emergency declared under Executive Order 2020-04 or any extension of that Order.**
- **Require the MLCC to refund or replace spirits for a on-premises licensee.**
- **Prohibit an on-premises licensee from selling, offering to sell, or advertising the sale of three, instead of two, or more identical drinks containing alcoholic liquor to an individual for the individual's consumption for one price.**

Specially Designated Distributor; Spirit Sale Quantities

Under the Code, a specially designated distributor may sell to an on-premises licensee up to nine liters of spirits during any one month and an on-premises licensee may purchase,

collectively from specially designated distributors, up to nine liters of spirits during any one-month. The bill would revise this provision.

Under the bill, beginning with the bill's effective date through December 31, 2021, a specially designated distributor could sell to an on-premises licensee an unlimited amount of spirits. After December 31, 2021, a specially designated distributor could sell to an on-premises licensee up to 225 liters of spirits during any 12-month period and an on-premises licensee could purchase, collectively from specially designated distributors, up to 225 liters of spirits during any 12-month period.

Uniform Price Discount

Currently, the Code permits specially designated distributors and on-premises licensees to receive a 17% discount from the uniform prices on alcoholic liquor purchased from the State. Under the bill, beginning on its effective date through December 31, 2021, on-premises licensees would be entitled to a 30% discount from uniform prices on alcoholic liquor purchased from the State.

On-Premises Licensee; Filling Containers & Delivery

Under the bill, an on-premises licensee could fill and sell qualified containers with beer, wine, mixed spirit drink, or spirits for consumption off the premises under the following conditions:

- The on-premises licensee or his or her agent or employee did not fill a qualified container in advance of the sale.
- The on-premises licensee complied with all applicable rules promulgated by the MLCC.

An on-premises licensee could deliver beer, wine, mixed spirit drink, or spirits to a consumer in Michigan if the on-premises licensee did all of the following:

- Complied with all State laws, including the prohibition on sales to minors.
- Stamped, printed, or labeled on the outside of the qualified container that the package "Contains Alcohol. Must be delivered to a person 21 years of age or older."
- Did not allow a straw hole on the qualified container.

The bill would require the recipient at the time of the delivery to provide identification verifying his or her age.

"Consumer" would mean that term as defined in Section 203: an individual who purchases beer, wine, or spirits for personal consumption and not for resale. "Qualified container" would mean any clean, sealable container that is for the sale of alcoholic liquor for consumption off the premises and that has a liquid capacity that does not exceed one gallon.

On-Premises Licensee; Outdoor Service Area

The bill would allow an on-premises licensee that had written approval from the MLCC to have outdoor service in an outdoor service area, until December 31, 2021, to add seating or a bar to that area without the approval of the MLCC or the governing body of the local unit of government in which the licensed premises was located.

Social District

The bill would allow a governing body of a local unit of government to designate a social district that contained a commons area that could be used by on-premises licensees that

obtained a social district permit. If the governing body designated a social district that contained a commons areas, it would have to define and clearly mark the commons area in a manner prescribed by the MLCC. The governing body could, at any time, revoke the designation if it determined that the commons area threatened the health, safety, or welfare of the public or had become a public nuisance. The governing body would have to file the designation or the revocation of the designation with the MLCC.

The holder of a social district permit could sell alcoholic liquor for consumption on the premises within the confines of a common area. The consumption of alcoholic liquor on the commons area could occur only during the legal hours for the sale of alcoholic liquor by the permittee. Only the holder of a social district permit or employees of that permittee could sell or dispense alcoholic liquor in the commons area.

The holder of a social district permit could serve alcoholic liquor to be consumed in the commons area only in containers that prominently displayed the permittee's trade name or logo or some other mark that was unique to the permittee under its on-premises license. The holder of a social district permit could not allow alcoholic liquor to leave the commons area or its premises.

An on-premises licensee that was adjacent to a commons area in a social district designated by the governing body of a local unit of government could obtain from the MLCC an annual social district permit. The permit would have to be issued for the same period and could be renewed in the same manner as the on-premises license held by the applicant. The MLCC would have to develop an application for a social district permit and would have to charge a fee of \$250 for the permit. After receiving a completed application and the fee, the MLCC would have to notify the governing body of the local unit of government and verify the designation of a social district and that the location listed on the application was adjacent to and qualified for a social district permit. An application for a social district permit would have to be approved by the governing body of the local unit of government in which the applicant's place of business was located before the permit was granted. The MLCC would have to provide the governing body and the local chief of police with the applicant's name, business address, and business telephone number to accomplish the review.

"Commons area" would mean an area within a social district designated by the governing body of the local unit of government that is shared by and abuts the premises of at least two other on-premises licensees.

Wholesaler Refund/Replacement of Beer or Wine

The Code allows a manufacturer that sells direct to a retailer or a wholesaler to refund to a retailer the amount it paid for beer or wine, or to replace that beer or wine for any of the reasons specified in the Code.

Until the expiration of the state of emergency declared under Executive Order 2020-04 (which authorized a state of emergency in response to the coronavirus disease 2019 (COVID-19) pandemic) or any extension of that Order, a wholesaler would have to do either of the following:

- Refund to an on-premises licensee the amount the on-premises licensee paid for beer or wine, as applicable, if the beer or wine was outdated.
- Replace beer or wine, including partially used products, for an on-premises licensee, as applicable, if the beer or wine was outdated.

The wholesaler would have to replace beer or wine before the outdated beer or wine was picked up by the wholesaler.

MLCC Refund/Replacement of Spirits

A specially designated distributor that sells spirits to a special licensee that is authorized by the MLCC to sell spirits may refund the licensee for the return of an unopened bottle in the same amount that the licensee paid for the spirits, less any of the credit card transaction fees, if the bottle is without damage that would prevent the salability of the bottle.

Under the bill, the MLCC would have to do either of the following:

- Refund to an on-premises licensee the amount paid for spirits if the spirits were outdated.
- Replace the spirits for an on-premises licensee if the spirits were outdated.

The MLCC or its authorized distribution agent would have to replace spirits before the outdated spirits were picked up by the MLCC or its agent.

Identical Drink Sale Price

Under the Code, an on-premises licensee may not sell, offer to sell, or advertise the sale of two or more identical drinks containing alcoholic liquor to an individual for the individual's consumption for one price. If two or more identical drinks containing alcoholic liquor are served to an individual at one time, the price charged for the second and each additional drink must be the same as the price charged for the first drink. The bill would modify each reference to a second drink in the provisions above to a third drink.

MCL 436.1205 et al.

Legislative Analyst: Drew Krogulecki

FISCAL IMPACT

The bill would have a negative fiscal impact on State government and a minimal fiscal impact on local units of government.

The proposed discount of 30% would have a significant negative fiscal impact on the General Fund. The MLCC calculated the losses from a similar proposal using fiscal year (FY) 2017-18 and 2018-19 figures at about \$30.0 million per fiscal year. Under the bill, the increased discount would last only from the bill's effective date to December 31, 2021.

The cost of developing an application for the social district permit likely would be covered by existing appropriations; however, the proposed \$250 fee would not fully cover the cost of developing or administering the program. It is unclear at this time how many licensees would apply for such a permit.

The costs to local units of government associated with the designation of social districts and the permit approval process would be absorbed by existing appropriations.

Fiscal Analyst: Elizabeth Raczkowski

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.