



Senate Fiscal Agency  
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BILL ANALYSIS

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House Bill 5341 (Substitute H-1 as passed by the House)  
House Bill 5342 (Substitute H-1 as passed by the House)  
House Bill 5343 (Substitute H-1 as passed by the House)  
House Bill 5344 (Substitute H-1 as passed by the House)  
House Bill 5345 (Substitute H-1 as passed by the House)  
House Bill 5346 (Substitute H-1 as passed by the House)  
House Bill 5347 (Substitute H-1 as passed by the House)  
House Bill 5348 (Substitute H-1 as passed by the House)  
House Bill 5349 (Substitute H-1 as passed by the House)  
House Bill 5350 (Substitute H-1 as passed by the House)  
House Bill 5351 (Substitute H-1 as passed by the House)  
House Bill 5352 (Substitute H-2 as passed by the House)  
House Bill 5353 (Substitute H-2 as passed by the House)  
House Bill 5354 (Substitute H-1 as passed by the House)  
House Bill 5355 (Substitute H-1 as passed by the House)  
House Bill 5400 (as passed by the House)  
Sponsor: Representative Pauline Wendzel (H.B. 5341-5344)  
Representative Jason Wentworth (H.B. 5345 & 5346)  
Representative Alex Garza (H.B. 5347, 5348, & 5400)  
Representative Matt Hall (H.B. 5349 & 5350)  
Representative Graham Filler (H.B. 5351 & 5352)  
Representative Sara Cambensy (H.B. 5353, 5354, & 5355)  
House Committee: Regulatory Reform  
Ways and Means  
Senate Committee: Regulatory Reform

Date Completed: 5-28-20

### **CONTENT**

**House Bill 5341 (H-1) would amend the Michigan Liquor Control Code to revise provisions concerning brewpub licensure to reflect the changes proposed in House Bill 5355 (H-1).**

**House Bill 5342 (H-1) would amend the Michigan Liquor Control Code to do the following:**

- **Subject the delivery of wine by a third-party facilitator service to Section 203(3), which allows a retailer that holds a specially designated merchant (SDM) license to use a common carrier to deliver wine to a consumer in Michigan, subject to certain requirements.**
- **Delete provisions allowing a qualified micro brewer or an out-of-State entity that is the substantial equivalent of a micro brewer to sell and deliver beer to a retailer in Michigan if certain conditions are met.**
- **Delete the term "qualified micro brewer", and define the term "facilitate".**

**House Bill 5343 (H-1)** would amend the Michigan Liquor Control Code to allow a micro brewer or an out-of-State entity that was the substantial equivalent of a micro brewer to sell and deliver beer to a retailer in Michigan only if certain conditions were met.

**House Bill 5344 (H-1)** would amend the Michigan Liquor Control Code to revise provisions concerning manufacturers that sell directly to a retailer to reflect the proposed provisions of House Bill 5343 (H-1).

**House Bill 5345 (H-1)** would amend the Michigan Liquor Control Code to do the following:

- Specify that, beginning March 15, 2020, the Michigan Liquor Control Commission (MLCC) could not require that the \$6.30 tax levied on each barrel of beer manufactured and sold in Michigan to be paid in less than quarterly intervals.
- Revise the definition of "eligible brewer" as it relates to a credit against the tax described above to increase, from 50,000 to 60,000, the maximum number of barrels produced to be eligible for the credit.

**House Bill 5346 (H-1)** would amend the Michigan Liquor Control Code to specify that, beginning March 15, 2020, the MLCC could not require the 13.5 cent-per-liter tax on all wine containing 16% or less of alcohol by volume sold in Michigan to be paid in less than quarterly intervals.

**House Bill 5347 (H-1)** would amend the Michigan Liquor Control Code to do the following:

- Specify that a beer festival that spanned two or more consecutive days would be considered one event for the purposes of a special license.
- Revise a current provision to allow a holder of a special license to buy a quantity of beer directly from any licensed brewpub or wholesaler or directly from a micro brewer eligible to self-distribute to the beer festival for consumption only at the licensed event.
- Classify beer that was dispensed to consumers for showcasing beer at a beer festival as a sample.
- Allow a holder of a special license to offer beer without consideration.
- Specify that a member who was 18 years of age or older of an organization that held a special license could serve beer at the event.

**House Bill 5348 (H-1)** would amend the Michigan Liquor Control Code to revise the subjects that must be covered in a salesperson license accreditation program.

**House Bill 5349 (H-1)** would amend the Michigan Liquor Control Code to delete and revise provisions concerning the assignment of brand extension for a manufacturer or outstate seller of beer or malt beverages.

**House Bill 5350 (H-1)** would amend the Michigan Liquor Control Code to make similar changes to those proposed by House Bill 5349 (H-1), however these would apply to a manufacturer or outstate seller of wine, mixed win drink, or mixed spirit drink.

**House Bill 5351 (H-1)** would amend the Michigan Liquor Control Code to create a definition for a "successor to a supplier that continues in business".

**House Bill 5352 (H-2)** would amend the Michigan Liquor Control Code to specify that a manufacturer's termination, cancellation, nonrenewal, or discontinuation of an agreement with a wholesaler would be void if the manufacturer sold the brand or brands of beer or wine, as applicable, subject to the termination, cancellation, nonrenewal, or discontinuation to a wholesaler or retailer within Michigan before the expiration of 24 months after the effective date of the written notice provided to a wholesaler.

**House Bill 5353 (H-2)** would amend the Michigan Liquor Control Code to specify that a current registration condition that must be met for a merchant to fill and sell growlers with beer for consumption off the premises would not apply to certain licensees.

**House Bill 5354 (H-1)** would amend the Michigan Liquor Control Code to delete the requirement that a brewpub cannot sell beer in Michigan unless it provides for each brand or type of beer sold a label 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 the Federal malt beverage labeling requirements.

**House Bill 5355 (H-1)** would amend the Michigan Liquor Control Code to do the following:

- Specify that Section 609a of the Code (which requires a manufacturer or wholesaler to file with the MLCC a schedule of net cash prices to the retailer for all brands of case and keg beer for its market area, among other things) would not apply to a brewpub.
- Specify that a wholesaler or a retailer would not be considered in violation of a rule found in the Michigan Administrative Code that requires beer in Michigan to receive a registration number and be approved by the MLCC before its sale if certain conditions applied.
- Prohibit the MLCC from implementing or enforcing certain rules concerning proof of compliance with Federal labeling requirements and the registration of beer with the MLCC for products manufactured by a brewer and for products that a micro brewer or brewer sold exclusively at its tasting room or at a beer festival beginning on the bill's effective date.

**House Bill 5400** would amend the Michigan Liquor Control Code to revise the definition of "micro brewer" to accommodate the changes proposed by House Bill 5343 (H-2).

House Bill 5348 (H-1) rescinds R 436.1319 of the Administrative Code (described below).

All of the bills are tie-barred to each other.

Except for House Bills 5341 (H-1), 5344 (H-1), 5350 (H-1), 5354 (H-1), and 5400, each bill is described in further detail below.

#### **House Bill 5342 (H-1)**

Under the Code, a retailer that holds an SDM license located in Michigan may use a third-party facilitator service by means of the internet or mobile application to facilitate the sale of beer or wine as provided under the Code, and a third party facilitator service may deliver beer or wine to a consumer on behalf of a retailer that holds an SDM license if certain conditions

are met. The bill specifies that the delivery of wine under the above provision would be subject to Section 203(3), which allows a retailer that holds an SDM license located in Michigan to use a common carrier to deliver wine to a consumer in Michigan, subject to certain requirements.

Under the Code, a qualified micro brewer or an out-of-State entity that is the substantial equivalent of a micro brewer may sell and deliver beer to a retailer in Michigan if all of the following conditions are met:

- The retailer is not located in a sales territory for which the qualified micro brewer has granted exclusive sales rights to a wholesaler for the sale of any brand or brands of beer produced by that micro brewer.
- The beer is sold and delivered by an employee of the qualified micro brewer, not an agent, and is transported and delivered using a vehicle owned by the qualified micro brewer.
- The qualified micro brewer is in compliance with applicable State and Federal law and applicable regulatory provisions of the Code and rules adopted by the MLCC, including requirements related to employees that sell and deliver beer to retailers, vehicles used to deliver beer to retailers, and price schedules and temporary price reductions.

The bill would delete these provisions.

"Facilitate" would mean advertising on behalf of a retailer, by means of the internet or mobile application, and under 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.
- Assisting the retailer by providing customer service.
- If the retailer maintains the supervision and control over the day-to-day operation of its business, providing other normal and customary operational services.

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

The bill also would delete the term "qualified micro brewer", which means a micro brewer that produces in total less than 1,000 barrels of beer per year (in determining the 1,000-barrel threshold, all brands and labels of a micro brewer, whether brewed in Michigan or outside of Michigan, must be combined).

### **House Bill 5343 (H-1)**

#### **Statement of Legislative Findings**

The bill states the following:

- (1) The legislature finds that the 3-tier system is necessary to protect public health and safety of Michigan residents and to promote competition and access to market for all alcoholic beverage suppliers.
- (2) The legislature further finds that vertical integration of the alcoholic beverage industry is contrary to this state's interest in protecting public health

and safety of Michigan residents and leads to anti-competitive behavior by beverage alcohol suppliers.

(3) The legislature further finds that the 3-tier system and the prohibitions under section 603 achieve the following public policy goals:

(a) Promote consumer choice and product variety by providing a platform that provides all suppliers access to Michigan's beverage alcohol market.

(b) Encourage wholesalers to invest in their businesses and all the brands they distribute, free from undue interference from the suppliers of the brands they distribute.

(c) Create a transparent and accountable alcohol distribution system that allows the commission to prevent the manufacture, distribution, or sale of counterfeit, adulterated, unregistered, recalled, or prohibited alcoholic beverages.

(4) This state has an interest in creating market access for all sizes of suppliers and finds that micro brewers create competition and variety in Michigan's beer market.

### Micro Brewer; Delivery to Retailer

For the purposes of creating access to Michigan's beer market while also preserving the three-tier system and limiting vertical integration, the bill would allow a micro brewer or an out-of-State entity that was the substantial equivalent of a micro brewer to sell and delivery beer to a retailer in Michigan only if all of the following conditions were met:

- The retailer was not located in a sales territory for which the micro brewer or out-of-State entity had granted exclusive sales rights to a wholesaler for the sale of any brand of beers produced by the micro brewer or out-of-State entity.
- The beer was sold and delivered by an employee of the micro brewer or out-of-State entity, not an agent, and was transported and delivered using a vehicle owned by the micro brewer or out-of-State entity.
- The micro brewer or out-of-State entity was in compliance with applicable State and Federal law and applicable regulatory provisions of the Code and rules promulgated by the MLCC, including those requirements related to employees that sell and deliver beer to retailers; vehicles used to deliver beer to retailers; price schedules and temporary price reductions; and Initiated Law 1 of 1976 (which concerns the use of returnable containers for different beverages).
- The micro brewer or out-of-State entity sold not more than 2,000 barrels of beer total per year.

In determining the 2,000-barrel threshold, all brands and labels of a micro brewer or out-of-State equivalent, whether sold to a wholesaler or a retailer in Michigan or outside of Michigan, would have to be combined. Sales and consumers on the licensed premises of the micro brewer or out-of-State entity would not be included in determining the 2,000-barrel threshold.

### **House Bill 5345 (H-1)**

Under the Code, the MLCC must levy and collect a tax on all beer manufactured or sold in Michigan at the rate of \$6.30 per barrel if the beer is sold in bulk or in different quantities. The MLCC must establish by rule a method for the collection of the tax and reporting requirements for wholesalers, brewers, brewpubs, and outstate sellers of beer to verify the remission of taxes to the State. The MLCC may not require that the tax be paid in less than monthly intervals.

Under the bill, beginning March 15, 2020, the MLCC could not require that the tax be paid in less than quarterly intervals.

The Code specifies that, regardless of whether the tax was remitted to the State by the eligible brewer or a designated wholesaler, an eligible brewer may claim a credit or request a refund, in a manner as determined by the MLCC, against the tax described above in the amount of \$2 per barrel for the first 30,000 barrels. As used in this provision, "eligible brewer" means a brewer, whether or not located in Michigan, or brewpub that manufactures not more than 50,000 barrels of beer during the tax year for which the credit is claimed. The bill would increase, from 50,000 to 60,000, the number of barrels listed in this definition.

#### **House Bill 5346 (H-1)**

The Code requires the MLCC to levy and collect on all wine containing 16% or less of alcohol by volume sold in Michigan a tax at the rate of 13.5 cents per liter if sold in bulk and in a like ratio if sold in smaller quantities.

The MLCC must establish by rule a method for the collection of the tax described above and reporting requirements for wholesalers, wine makers, outstate sellers of mixed spirit drink, and outstate sellers of wine to verify the remission of taxes to Michigan. The MLCC may not require that the tax be paid in less than monthly intervals. Under the bill, beginning March 15, 2020, the MLCC could not require that the tax be paid in less than quarterly intervals.

#### **House Bill 5347 (H-1)**

The Code allows the MLCC to issue a special license to an organization conducting a beer festival. The application must conform to the following:

- Be submitted by a nonprofit entity composed primarily of brewers, micro brewers, and brewpubs, as determined by the MLCC.
- Involve an event having for its primary purpose the showcasing of beer and its production.
- Be accompanied by a fee of \$25 per day of the event.

The special license must not allow more than six events per calendar year conforming to the requirements described above. Under the bill, for the purposes of this provision, a beer festival that spans two or more consecutive days would be considered one event.

Under the Code, a holder of a special license may buy a quantity of beer, as determined appropriate under the circumstances by the MLCC, directly from any licensed brewpub for consumption only at the licensed event. Under the bill, instead, a holder of a special license could buy a quantity of beer directly from any licensed brewpub or wholesaler or directly from a micro brewer eligible to self-distribute to the beer festival for consumption only at the licensed event.

Beer that was dispensed to consumers for showcasing beer at a beer festival would be considered a sample. A holder of a special license could offer beer without consideration. A member who was 18 years of age or older of an organization that held a special license could serve beer at the event.

#### **House Bill 5348 (H-1)**

The Code requires the MLCC to issue a salesperson license to an individual who is a designated employee of certain entities (such as manufacturers of beer, wine, and mixed spirit drink). However, the MLCC may not issue a salesperson license unless an applicant submits with his or her application written documentation that he or she has successfully completed a salesperson accreditation program.

The MLCC must approve a salesperson license accreditation program designed for salesperson licensees if it determines that the program's curriculum includes an understanding of certain subjects, including those in R 436.1319 of the Michigan Administrative Code (which prohibits cooperative advertising between certain entities, allows for specified advertising actions, and prohibits the name of a retail licensee from appearing in the advertising of a manufacturer, outstate seller of beer or wine, or a wholesaler). The bill would remove R 436.1319 of the Code from the list of required accreditation program subjects, and include Section 610d of the Michigan Liquor Control Code, instead. (Section 610d contains similar provisions to R 436.1319 of the Michigan Administrative Code, as well as provisions concerning instant rebate coupons.)

#### **House Bill 5349 (H-1)**

Under the Michigan Liquor Control Code, until July 1, 1995, a manufacturer or outstate seller of beer or malt beverages who acquired or otherwise obtained the right to assign brands of another manufacturer or outstate seller of beer or malt beverages between January 1, 1994, and July 1, 1995, must assign a brand extension to the wholesaler that was granted the exclusive sales territory to the brand from which the brand extension resulted. Beginning July 1, 1995, a manufacturer or outstate seller of beer or malt beverages who acquires or otherwise obtains the right to assign brands of another manufacturer or outstate seller of beer or malt beverages is not required to assign a new brand extension to the wholesaler that is granted the exclusive sales territory to the brand from which the new brand extension results. Any brand extension assigned between January 1, 1994, and July 1, 1995, must remain assigned to the assigned wholesaler. The bill would delete these provisions.

Under the Code, a brand extension is not considered a new or different brand. A manufacturer or outstate seller of beer or malt beverages must assign a brand extension to the wholesaler that was granted the exclusive sales territory to the brand from which the brand extension resulted. Under the bill, these provisions would not apply if, before October 1, 2019, a successor manufacturer or successor outstate seller of beer or malt beverages had assigned a brand extension to a wholesaler that was not the appointed wholesaler for the brand from which the brand extension was made.

#### **House Bill 5351 (H-1)**

The bill would amend the Code to create a definition for "successor to a supplier that continues in business". The term would mean a supplier that acquired a brand or brands from another supplier and remains in business after it acquires that brand or brands. As used in this term, "supplier" would mean any of the following:

- Brewer.
- Outstate seller of beer.
- Master distributor.
- Wine maker.
- Outstate seller of wine.

#### **House Bill 5352 (H-2)**

The bill would amend the Liquor Control Code to specify that a manufacturer's termination, cancellation, nonrenewal, or discontinuation of an agreement with a wholesaler as allowed under Sections 305(13) and 403(13) would be void if the manufacturer sold the brand or brands of beer or wine, as applicable, subject to the termination, cancellation, nonrenewal, or discontinuation to a wholesaler or retailer within Michigan before the expiration of 24

months after the effective date of the written notice provided to a wholesaler as required under Sections 305(13) or 403(13), as applicable.

(Section 305(13) allows a wine supplier to terminate, cancel, not renew, or discontinue an agreement after 30 days' written notice if the supplier discontinues production or discontinues distribution in Michigan of all the brands sold by the supplier to a wine wholesaler. Section 403(13) is substantially the same provision, but pertains to wholesalers and suppliers of beer.)

### **House Bill 5353 (H-2)**

Under the Code, an eligible merchant (a person that holds a specially designated merchant license) may fill and sell growlers with beer for consumption off the premises under the following conditions:

- The premises where the filling of growlers takes place comply with the requirements for food service establishments under the Food Law.
- The growler is sealed and has a label affixed to it that includes at least the brand name of the beer, the class of the beer, the net contents of the container, and the name of the retailer filling the growler.
- The eligible merchant or his or her agent or employee may not fill a growler in advance of the sale.
- The eligible merchant or his or her agent or employee may use only containers that have a capacity of five gallons or more to fill a growler.
- The eligible merchant complies with all applicable rules promulgated by the MLCC.

In addition to the above, an eligible merchant may fill and sell growlers with beer for consumption off the premises if the beer to be dispensed has received a registration number from, and has been approved for sale by, the MLCC. Under the bill, this registration condition would not apply to either of the following:

- A brewpub where beer manufactured on the premises by the licensee may be sold for consumption on or off the premises by licensees holding Class C, Tavern, or Class A or B Hotel licenses, but only as to beer that the brewpub produced.
- A micro brewer or brewer where beer manufactured by that entity could be sold in approved tasting rooms to a consumer for consumption on or off the manufacturing premises.

### **House Bill 5355 (H-1)**

Section 609a of the Code requires a manufacturer or wholesaler to file with the MLCC a schedule of net cash prices to the retailer for all brands of case and keg beer for its market area, among other things. The bill specifies that Section 609a would not apply to a brewpub.

Under the bill, if a person sold beer that had not received a registration number from the MLCC in violation of R 436.1611(1)(d) of the Michigan Administrative Code (which prohibits the sale of beer in Michigan unless it receives a registration number from the MLCC and is approved for sale by the MLCC) and if a wholesaler filed a schedule of net cash prices as required, both of the following would apply:

- The wholesaler would not be considered to have violated R 436.1611(1)(d).
- A retailer would not be considered to have violated R 436.1611(1)(d).



Beginning on the bill's effective date, the MLCC could not implement or enforce R 436.1611(1)(c) and (d) of the Code for products manufactured by a brewer and for products that a micro brewer or brewer sold exclusively at its tasting room or at a beer festival.

(Subrule 1(c) of R 436.1611 prohibits the sale of beer in Michigan unless a brewer, outstate seller of beer, or wholesaler that is responsible for labeling furnishes proof, upon request, that valid certificates of approval for the label have been obtained from the United States Alcohol and Tobacco Tax and Trade Bureau and are unrevoked under the provisions of the Federal labeling requirements. If a certificate of label approval is not required by the Bureau, the brewer, outstate seller of beer, or wholesaler must submit an electronic copy of the label.)

MCL 436.1407 (H.B. 5341)  
MCL 436.1203 (H.B. 5342)  
Proposed MCL 436.1203a (H.B. 5343)  
MCL 436.1609c (H.B. 5344)  
MCL 436.1409 (H.B. 5345)  
MCL 436.1301 (H.B. 5346)  
MCL 436.1526 (H.B. 5347)  
MCL 436.1502 (H.B. 5348)  
MCL 436.1401 (H.B. 5349)  
MCL 436.1307 (H.B. 5350)  
MCL 436.1111 (H.B. 5351)  
Proposed MCL 436.1602 (H.B. 5352)  
MCL 436.1538 (H.B. 5353)  
MCL 436.1405 (H.B. 5354)  
MCL 436.1609a (H.B. 5355)  
MCL 436.1109 (H.B. 5400)

Legislative Analyst: Drew Krogulecki

### **FISCAL IMPACT**

Except for House Bills 5345 (H-1), 5346 (H-1), and 5347 (H-1), all the bills would have no fiscal impact on State or local government.

#### **House Bills 5345 (H-1) & 5346 (H-1)**

The bills would have a minor negative fiscal impact on State government and no fiscal impact on local units of government

Under House Bill 5345 (H-1), more brewers would qualify for the small brewer's tax credit, although the MLCC expects the number of brewers who would be affected and who would apply to be small. The credit is \$2 per barrel for the first 30,000 barrels produced. The impact on tax revenue would be minimal.

Under House Bill 5345 (H-1) and House Bill 5346 (H-1), the MLCC would require beer and wine taxes to be paid no more frequently than on a quarterly basis. Currently, the taxes are paid on a monthly basis. The greater concentration of payments at one time would result in increased staff workloads at the end of each quarter. However, this cost likely would be absorbed by existing appropriations. The change also would result in a decrease in late fee revenue of about \$15,000 annually.

#### **House Bill 5347 (H-1)**

House Bill 5347 (H-1) likely would have a minor fiscal impact on the Department of Licensing and Regulatory Affairs and no fiscal impact on local units of government. Under current law,

an organization that holds a beer festival may hold up to six events per calendar year. The organization is required to pay \$25 per day of the event. The bill would add an additional clarification that a beer festival that spanned multiple days would be considered a single event. However, this is already the case under the law. To the extent that license holders change their behavior because of the modification, the bill could result in a slight increase or decrease in special license revenue. The magnitude of the impact likely would be minimal.

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.