

Legislative Analysis



ALCOHOL DISPENSING MACHINES

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House Bill 5304 (H-3) as passed by the House

Sponsor: Rep. Rodney Wakeman

Committee: Regulatory Reform

Complete to 2-17-22

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

BRIEF SUMMARY: House Bill 5304 would add a new section to the Michigan Liquor Control Code to allow an establishment holding an on-premises liquor license and certain manufacturers with a tasting room permit to have a machine that dispenses beer, wine, or mixed spirit drink to a customer on the licensed premises if certain conditions are met. Such machines are now allowed by administrative rule in hotel rooms and at customer's tables under certain conditions. The bill would codify and expand those provisions and add new provisions to allow dispensing machines that are not located at a customer's table and are operated by a secure key card.

FISCAL IMPACT: House Bill 5304 could lead to increased penalty revenue under the Michigan Liquor Control Code. Violations of section 801(1) would be subject to a \$2,000 penalty under the bill, whereas current law allows for a \$1,000 penalty. The amount of the revenue increase would depend on violation volumes, which are indeterminate.

THE APPARENT PROBLEM:

The growth in the craft beverage industry across the nation has led on-premises establishments to find new and innovative ways to give their customers a unique experience. In particular, "beer walls" or "tap walls," in which multiple taps on a counter, tabletop, or wall allow a customer to self-pour from a selection of beers, wine, or mixed spirit drinks are gaining in popularity. Since the customer controls the pour, a person can sample multiple options before making a choice. Typically, a card embedded with a microchip is loaded with a customer's payment information and may also limit how much can be poured at one time as well as how many ounces can be poured in total before the card must be reloaded by a server. A sensor on the self-serve machine reads the information on the chip and enables the beer, wine, or mixed spirit drink to be dispensed.

Reportedly, whether enabling customers quicker access to a drink order in a large and busy establishment, or enabling a small mom-and-pop restaurant to stay open in the face of staffing shortages, the new technology appears to be popular with both consumers and businesses. Although bars and restaurants in many states are offering self-pour options to their customers, devices or systems that dispense alcohol directly to consumers are, with a few exceptions, currently prohibited in Michigan. Some feel that allowing bars and restaurants in Michigan to install tap walls could help many establishments still struggling to recover from impacts of the COVID-19 pandemic.

THE CONTENT OF THE BILL:

House Bill 5304 would codify provisions of R 436.1045 of the Michigan Administrative Code that now allow dispensing machines in hotel rooms and at customer's tables under certain circumstances (see "Rule rescission," below). However, the bill would expand the provisions to allow mixed spirit drink to be dispensed at a customer's table (the rule now allows only beer or wine) and would add new provisions to allow for dispensing machines that are not located

at a customer's table and are operated by a secure key card. An on-premises licensed establishment where such a dispensing machine was located would be subject to an enhanced administrative penalty for certain violations of the code. The bill would rescind R 436.1045.

Dispensing machines under the bill

The bill would add a new section to the code to generally prohibit a licensee from allowing on the licensed premises a machine that dispenses alcohol directly to a customer and to establish exceptions providing that this prohibition does not apply to any of the following:

- A dispensing machine located in a bedroom or suite of a hotel of a class A or class B hotel licensee.
- A dispensing machine located at an on-premises licensed establishment if all of the following conditions are met:
 - The dispensing machine is located at a customer's table or booth.
 - The dispensing machine does not dispense more than 96 ounces of beer, wine, or mixed spirit drink in a single order.
 - The dispensing machine does not dispense spirits.
 - The customer orders the beer, wine, or mixed spirit drink from a clerk, servant, agent, or employee of the on-premises licensee.
 - The ***on-premises licensee*** does not sell, offer to sell, or advertise the sale of an unlimited quantity of beer, wine, or mixed spirit drink from the dispensing machine.
 - The sale, service, and consumption of the dispensed alcohol are monitored by the on-premises licensee or the licensee's clerk, servant, agent, or employee to ensure compliance with the code and rules promulgated under it.
- A dispensing machine located at an on-premises licensed establishment if all of the following conditions are met:
 - The dispensing machine is not located at a customer's booth or table.
 - The customer activates the dispensing machine with a secure key card supplied by the on-premises licensee or the licensee's clerk, servant, agent, or employee. (An on-premises licensee, clerk, servant, agent, or employee who supplies a secure key card or reactivates it as described below would have to comply with section 801 of the code, which prohibits a retail licensee from selling, furnishing, or giving alcohol to a minor or to a visibly intoxicated individual.)
 - The secure key card is attached to the customer at all times through a necklace or bracelet or other means of securing it to the customer.
 - The dispensing machine does not dispense more than 16 ounces of beer, 12 ounces of wine, or 12 ounces of mixed spirit drink for each serving.
 - The dispensing machine does not dispense more than 32 ounces of any alcohol before the key card is reactivated by the licensee, clerk, servant, agent, or employee.
 - The dispensing machine does not dispense spirits.
 - The sale, service, and consumption of the dispensed alcohol are monitored by the licensee, clerk, servant, agent, or employee to ensure compliance with the code and departmental rules promulgated under it.

On-premises licensee would mean either of the following:

- A retailer that holds a license, other than a special license, to sell alcohol for consumption on the licensed premises.

- A manufacturer with an on-premises tasting room permit, off-premises tasting room permit, or joint off-premises tasting room license issued under section 536 of the code.

Under section 537 of the code, retailers that hold a license to sell alcohol for consumption on the licensed premises include, but are not limited to, the following:

- Taverns.
- Class C (e.g., restaurants).
- Clubs: sale only to bona fide members at least 21 years of age.
- Class A and class B hotels.
- Brewpubs.
- Class G-1 or G-2 (golf courses).
- Motorsports event licensees.
- Certain manufacturers (e.g., a small wine maker, brandy manufacturer, or mixed spirit manufacturer) in an approved tasting room.

Enhanced administrative penalty

Section 801(1) of the code prohibits a **retail licensee** from selling, furnishing, or giving alcohol to a minor or to a visibly intoxicated individual. Currently, the Michigan Liquor Control Commission, or any commissioner or authorized agent of the commission, may assess a penalty of up to \$1,000 for each violation of section 801(1), in addition to or instead of revoking or suspending the licensee's license. The penalty is paid to the commission, deposited with the state treasurer, and credited to the general fund.

Retail licensee means a person licensed to sell alcohol at retail for consumption on or off the licensed premises.

The bill would allow a penalty of up to \$2,000, instead of the current \$1,000 maximum penalty, to be assessed for each violation of section 801(1) by an on-premises licensee, or a clerk, servant, or employee of the licensee, if at the on-premises licensed establishment there is a dispensing machine that is not located at a customer's booth or table and is operated by secure key card, as described above. The enhanced penalty would apply regardless of whether the violation was associated with the dispensing machine. As now, the commission could suspend or revoke the on-premises licensee's license in addition to assessing the penalty.

Rule rescission

R 436.1045 of the Michigan Administrative Code now generally prohibits a licensee from allowing on the licensed premises a vending machine that dispenses alcohol directly to a customer, whether or not operated by coin or currency, and also provides that this prohibition does not apply to either of the following:

- A dispensing machine, commonly known as an "in-room bar device," whether or not operated by coin or currency, that is located in the bedrooms or suites of licensed hotels.
- A dispensing machine that is located at an on-premises licensed establishment under all of the following conditions:
 - The dispensing machine is located at a patron's table or booth only.
 - The dispensing machine does not dispense more than 96 ounces of beer or wine in a single order.
 - The dispensing machine does not dispense spirits or mixed spirit drink.

- The patron of the establishment ordered the beer or wine from the clerk, servant, agent, or employee of the licensee, who verified the patron's legal age and determined that the patron can otherwise be served an alcoholic beverage.
- The licensee does not sell, offer to sell, or advertise the sale of an unlimited quantity of beer or wine from the dispensing machine.
- The licensee monitors the sale, service, and consumption of beer or wine from the dispensing machine to ensure compliance with the code and rules promulgated under it.

R 436.1045 also prohibits a manufacturer, outstate seller of beer or wine, or wholesaler from selling, giving, or otherwise furnishing dispensing equipment, furniture, or fixtures to a retail licensee and prohibits a retail licensee from purchasing, receiving, or otherwise accepting the dispensing equipment from any of those licensees. In addition, R 436.1045 allows a manufacturer, wholesaler, or retail licensee who sells alcohol to a special licensee to provide draft beer-dispensing equipment or cooling equipment to the special licensee for use during the effective period of the special license. These provisions have been codified or made obsolete by recent changes to the Liquor Control Code.

The bill would rescind R 436.1045.

Proposed MCL 436.1552

HOUSE FLOOR ACTION:

The House adopted and passed an H-3 substitute for the bill, which expanded the scope of the bill's general prohibition against machines that dispense alcohol directly to a consumer. As noted above, the bill would rescind R 436.1045 of the Michigan Administrative Code. Among other things, the rule prohibits *all* licensees, not just on-premises licensees, from allowing a machine on the licensed premises that dispenses alcohol directly to a customer. The prohibition in the H-2 substitute reported from committee applied only to *on-premises* licensees, which in conjunction with the rule rescission would have allowed off-premises licensees to have dispensing machines, such as vending machines that, much like a candy or soda pop machine, dispense cans of beer or bottles of wine or spirits. The H-3 substitute passed by the House replicates the language of R 436.1045 by generally prohibiting *all* licensees, not just on-premises licensees, from allowing a machine on the licensed premises that dispenses alcohol directly to a customer.

ARGUMENTS:

For:

Whether ordering a pitcher of beer or margaritas, or a carafe or bottle of wine, customers are used to pouring themselves another glass of a favorite brew or beverage. Some would like Michigan on-premises liquor establishments to be able to incorporate multiple taps into their business model that would enable customers to self-pour their own beer, wine, or mixed-spirit drinks. The benefit to consumers is that they could sample one or more drink options before making a choice. Or they could enjoy one or more products rather than being locked in to whatever is in the pitcher. If the server is busy with other patrons, customers can go to the "tap wall" and fill or refill their glasses when they are ready rather than waiting or trying to flag down a harried server. If a business is experiencing chronic or short-term staffing issues, a tap wall may relieve enough of the burden on available workers to avoid closing early or losing an entire day of operation.

Supporters say that what the bill would not do is to create easy access to an unlimited source of alcohol. The bill would apply only to on-premises licensees and would not allow the self-dispensing of hard liquor. All current laws, including those regarding staff training and prohibitions on serving minors or visibly intoxicated patrons, would be enforced. In fact, the bill would double the amount of an administrative fine for serving minors or intoxicated customers that could be imposed on a licensee having a tap wall (but not those with dispensing machines at the table) whether the violation involved the tap wall or not. To get a key card to operate a dispensing machine, a customer would first provide an ID to an employee to verify age, along with a credit or debit card. Payment information would be stored on the key card, along with the ounces allowed to be dispensed. (The bill would limit the maximum amount that could be poured for a single drink and the maximum amount in total before the card would have to be reactivated by an employee.) The bill also would require the key card to be attached to the patron in some manner. Therefore, the bill would result in multiple interactions between the customer and employees similar to those that occur with table service. According to information available online, the key card keeps track of the transactions, allowing employees to see how often the card was reloaded.

Reportedly, many states, including those that border Michigan, already allow such dispensing technology. Allowing Michigan on-premises licensees to offer more self-pour options could enhance the customer experience while giving businesses a boost in recovering from economic hardships caused by the lingering COVID-19 pandemic.

Against:

Some concern was expressed that the bill could lead to businesses permanently reducing server positions, which could result in a loss of jobs across the restaurant and bar industry. Also, some questioned the appropriateness of allowing almost all on-premises licensees, which could include stadiums and other large-scale operations, to have tap walls, citing the potential difficulty in such large venues of monitoring tap wall users to prevent access by minors or visibly intoxicated individuals. This could be exacerbated if the key card enabling the machines were easy to take on and off and could therefore be given to another person or if insufficient staff were employed or assigned to monitor those accessing the machines on a large tap wall.

POSITIONS:

The following entities indicated support for the bill:

- Michigan Licensed Beverage Association (2-8-22)
- Michigan Brewer's Guild (2-8-22)
- Michigan Restaurant and Lodging Association (10-19-21)

The Michigan Liquor Control Commission indicated a neutral position on the bill. (2-8-22)

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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.