

# Legislative Analysis



## SOCIAL DISTRICTS AND COCKTAILS TO GO

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

**House Bill 5781 as enacted**  
**Public Act 124 of 2020**  
**Sponsor: Rep. Michael Webber**

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

**House Bill 5811 as enacted**  
**Public Act 125 of 2020**  
**Sponsor: Rep. Sarah Anthony**

**Senate Bill 942 as enacted**  
**Public Act 126 of 2020**  
**Sponsor: Sen. Aric Nesbitt**

**1st House Committee (HBs 5781 and 5811): Regulatory Reform**  
**2nd House Committee (HBs 5781 and 5811): Ways and Means**  
**Senate Committee (HBs 5781 and 5811): Committee of the Whole**

**House Committee (SB 942): Ways and Means**  
**Senate Committee (SB 942): Regulatory Reform**

**Complete to 9-29-20**

**BRIEF SUMMARY:** House Bills 5781 and 5811 and Senate Bill 942 amend the Michigan Liquor Control Code to do the following:

- Until December 31, 2024, allow certain on-premises licensees and manufacturers to obtain a permit to sell alcohol for consumption in the commons area of a social district. (HB 5781)
- Until December 31, 2025, allow certain on-premises licensees and manufacturers to fill and sell a qualified container with alcohol for consumption off the licensed premises and deliver a container to a Michigan consumer under certain conditions. (HB 5811)
- Until July 1, 2021, increase, from 17% to 23%, the discount allowed to on-premises licensees on liquor bought from the state. (SB 942)
- For spirits bought by on-premises retailers from specially designated distributors, change the allowable amount and the time period over which that amount is calculated, and require reports to the Michigan Liquor Control Commission (MLCC). (SB 942)
- Allow a mixed spirit manufacturer to sell or provide samples of its mixed spirit drink at certain off-premises tasting rooms under certain circumstances. (SB 942)
- Beginning March 1, 2020, allow manufacturers to refund or replace purchases of beer or wine by wholesalers when it has gone out of date or when the wholesaler has refunded or replaced a retailer's purchase for similar reasons. (SB 942)
- Allow an on-premises licensee to sell and advertise two-drink specials. (SB 942)

**FISCAL IMPACT:** House Bill 5781 and Senate Bill 942 would have an indeterminate fiscal impact on the state. The impact of House Bill 5811 would not be significant. See **Fiscal Information**, below, for a detailed discussion.

### **THE APPARENT PROBLEM:**

Closures, stay-at-home orders, and limitations on open hours or capacity restrictions due to the COVID-19 pandemic have had a severe impact on many business sectors. Restaurants and bars

have been hit particularly hard. Pre-COVID, restaurants and food service establishments represented about 10% of employment in Michigan. According to the National Restaurant Association, each \$1 spent generates \$1.90 for the state economy in the table-service segment and \$1.66 in the limited-service segment. Tens of thousands of direct and indirect jobs are also provided by the alcohol industry, from the many wineries, vineyards, brewers, and craft distillers to wholesalers and delivery services and retailers such as restaurants, bars, and liquor stores. In addition, taxes on sales of alcohol are a significant source of revenue for the state.

Slowing the spread of COVID-19 infections has taken a toll on the overall industry. Social distancing requirements mean that few patrons can dine in at small establishments, and limits on how many people can be inside larger establishments have made it hard for bars and restaurants to generate revenue sufficient to cover operating costs and pay staff. The profit margin for bars and restaurants is notoriously low, even in the strongest of economies, and many fail within the first few years of opening. Now, however, even long-successful and established bars and restaurants are in danger of closing forever. For instance, some say that up to one-third of the bars in Michigan are in danger of closing. Not only would such closures result in loss of employment and a corresponding loss to state revenue, but bars and restaurants often are important members of a community. They provide places for friends and families to gather, sponsor local sports teams, and contribute to local charities, among other things. Given the negative impact widespread closures of bars and restaurants could have on communities and the state's economy, some believed a boost could be given to these businesses if certain liquor laws were amended.

### ***THE CONTENT OF THE BILLS:***

**House Bill 5781** amends the Michigan Liquor Control Code to allow, through December 31, 2024, a ***qualified licensee*** to obtain a permit to sell and dispense alcohol to customers for consumption in the commons area of a social district.

***Qualified licensee*** means either of the following:

- A retailer that holds a license, other than a special license, to sell alcoholic liquor for consumption on the licensed premises.
- A manufacturer that has an on-premises tasting room permit, off-premises tasting room license, or joint off-premises tasting room license issued under the code.

#### **Commons area**

Under the code, an on-premises license allows the licensee to sell alcohol for consumption only on the licensed premises. The bill allows the governing body of a ***local governmental unit*** to designate a social district containing a ***commons area*** that may be used by a qualified licensee that obtains a social district permit.

***Local governmental unit*** means a city, township, village, or charter authority.

***Commons area*** means an area within a social district that is clearly designated and clearly marked by the governing body of the local governmental unit and that is shared by and contiguous to the premises of at least two qualified licensees. A commons area does not include the licensed premises of any qualified licensee.

The governing body of the local governmental unit cannot designate a social district that closes a road without the prior approval of the road authority with jurisdiction. The governing body must define and clearly mark the commons area with signs and submit to the MLCC local management and maintenance plans for the commons area, including hours of operation. The governing body must maintain the commons area in a way that protects the safety and health of the community. The governing body may revoke the social district designation, after at least one public hearing on the proposed revocation, if it determines that the commons area is a public nuisance or threatens the health, safety, or welfare of the public. A designation or a revocation must be filed with the MLCC.

#### Social district permit

A qualified licensee whose licensed premises are shared by and contiguous to a commons area in a designated social district can obtain an annual social district permit from the MLCC. A social district permit allows the permittee to sell alcohol for consumption within the confines of a commons area as long as the permittee only sells and serves alcoholic liquor on its licensed premises and only serves alcohol to be consumed in the commons area in a container that meets all of the following:

- It is not glass.
- Its liquid capacity does not exceed 16 ounces.
- It prominently displays a logo or other mark unique to the commons area.
- It prominently displays the permittee's trade name or logo or some other mark unique to the permittee under its on-premises license.

A person who buys a container of alcoholic liquor from a social district permittee may take the container from the permittee's premises and into the commons area but cannot take it out of the commons area or onto the licensed premises of another social district permittee. Alcohol consumption in the commons area as allowed by the bill is limited to the legal hours for the sale of alcohol by the permittee.

A social district permit must be issued for the same period and be renewed in the same manner as an applicant's on-premises license. The MLCC must develop an application for a social district permit. The permit fee is \$250, which is deposited into the Liquor Control Enforcement and License Investigation Revolving Fund. The governing body of the local governmental unit where the applicant's place of business is located must approve a permit before an application may be made to, or a permit may be granted by, the MLCC.

Finally, if the MLCC issues a special license to a special licensee located in a social district, the special licensee cannot sell and serve alcohol under the special district permit while the special license is in effect.

The bill took effect July 1, 2020. Its provisions no longer apply after December 31, 2024.

MCL 436.1551 and 436.2021

**House Bill 5811** amends the Michigan Liquor Control Code to allow a *qualified licensee* to fill and sell a container with alcoholic liquor for consumption off the licensed premises and to deliver the container to a consumer in Michigan under certain conditions. (*Qualified licensee* has the same meaning as in HB 5781, above.)

Under the bill, notwithstanding anything in the code to the contrary, a qualified licensee may fill and sell *qualified containers* with *alcoholic liquor* for consumption off the premises under the following conditions:

- The qualified licensee or his or her agent or employee does not fill a qualified container in advance of the sale.
- The qualified licensee or his or her agent seals the qualified container.
- The qualified licensee complies with all applicable rules promulgated by the MLCC.

*Qualified container* means a clean, sealable container for the sale of alcoholic liquor for consumption off the premises that has a liquid capacity of up to one gallon and that is sealed after filling with a substance or device that fully closes it off securely with no perforations or straw holes.

*Alcoholic liquor* means any spirituous, vinous, malt, or fermented liquor, powder, liquids, and compounds, whether or not medicated, proprietary, or patented, and by whatever name called, containing 1/2 of 1% or more of alcohol by volume that are fit for use as a food or a beverage as defined and classified by the MLCC according to alcoholic content as belonging to one of the varieties defined in Chapter 1 of the code.

In addition, and also notwithstanding anything in the code to the contrary, a qualified licensee may deliver alcoholic liquor to a *consumer* in Michigan under all of the following conditions:

- The qualified licensee complies with all laws, including those that prohibit selling alcohol to minors.
- The qualified licensee stamps, prints, or labels the outside of the qualified container with the words “Contains Alcohol. Must be delivered to a person 21 years of age or older.” (The recipient has to provide ID to verify his or her age at the time of delivery.)
- The qualified licensee or his or her agent seals the qualified container.
- If the qualified licensee is a manufacturer, the alcoholic liquor is delivered by an employee of the qualified licensee.
- If the qualified licensee is a retailer, the alcoholic liquor is delivered by an employee of the qualified licensee or by a *third party facilitator service*.

*Consumer* means an individual who purchases beer, wine, or spirits for personal consumption and not for resale.

*Third party facilitator service* means a person licensed by the commission to deliver or facilitate the sale of beer or wine, or spirits, to a consumer on behalf of a retailer that holds a specially designated merchant license (for beer or wine) or a specially designated distributor license (for spirits) located in this state.

A qualified licensee cannot sell alcoholic liquor in its original packaging under these provisions, except as otherwise allowed under the code.

The bill took effect July 1, 2020. Its provisions no longer apply after December 31, 2025.

MCL 436.1537a

**Senate Bill 942** amends the Michigan Liquor Control Code as described below.

#### Sales of spirits

Previously under the code, a specially designated distributor could sell up to 9 liters of spirits to an on-premises licensee in any one month, and an on-premises licensee could buy up to 9 liters of spirits collectively from specially designated distributors in any one month.

The bill instead allows a specially designated distributor to sell up to 120 liters of spirits to an on-premises retailer during a calendar year and allows an on-premises retailer to buy up to 120 liters of spirits collectively from specially designated distributors in a calendar year.

An on-premises retailer must submit to the MLCC a report indicating the purchases the retailer made under the above provisions for each month in which such purchases were made. The MLCC must establish the method and form for electronic reporting of these purchases by July 31, 2020. The MLCC cannot require a retailer to submit a report in less than monthly intervals and cannot require a report for a month when such purchases were not made.

#### Discount

Under the bill, until July 1, 2021, on-premises licensees can deduct 23% from the price of alcoholic liquor bought from the state. Previously, on-premises licensees were entitled to a 17% discount on those purchases.

#### Mixed spirit drink manufacturer tasting rooms

The bill allows a small distiller<sup>1</sup> or a distiller that also holds a mixed spirit drink manufacturer license to do all of the following, subject to limitations described in the code:

- Sell its mixed spirit drink for consumption off the licensed premises of an approved off-premises or joint off-premises tasting room.
- Sell its mixed spirit drink for consumption on the premises of an approved off-premises or joint off-premises tasting room.
- Sell or give away samples of any size of its mixed spirit drink for consumption on the licensed premises of an approved off-premises or joint off-premises tasting room.
- Sell or give away samples of up to three ounces of its mixed spirit drink for consumption on the premises of an approved off-premises or joint off-premises tasting room.

#### Outdated beer or wine

Beginning March 1, 2020, a manufacturer may refund to a wholesaler up to the amount the wholesaler paid for beer or wine, or replace the beer or wine, for either of the following reasons:

- The beer or wine the wholesaler bought from the manufacturer has gone out of date while in the wholesaler's possession.
- The wholesaler bought the beer or wine from the manufacturer and refunded to a retailer the amount paid by the retailer for that beer or wine, or replaced it, under provisions that allow for such refund or replacement when, among other reasons, the beer or wine is outdated, defective, misdelivered, discontinued, or likely to spoil.

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<sup>1</sup> A small distiller is a manufacturer of spirits that annually manufactures in Michigan not more than 60,000 gallons of spirits, of all brands combined.

### Two-drink specials

Previously, an on-premises licensee could not sell, offer to sell, or advertise the sale of two or more identical drinks containing alcohol to an individual for his or her consumption for one price. If two or more identical drinks were served at one time, the second had to cost the same as the first.

The bill amends the above prohibition to apply to the sale or advertisement of three or more identical drinks and provide that if three or more drinks are served at one time, the third must cost the same as the first. Under the bill, an on-premises licensee may sell, offer to sell, or advertise the sale of two drinks for one price or sell the second identical drink for a different price than the first. However, except on prior written order by the MLCC, the licensee cannot sell alcoholic liquor to an individual under these provisions for a price that is less than the licensee's cost for the alcoholic liquor.

The bill took effect July 1, 2020.

MCL 436.1205 et seq.

### ***FISCAL INFORMATION:***

**House Bill 5781** would have an indeterminate fiscal impact on the Department of Licensing and Regulatory Affairs (LARA) and local units of government. The bill would require the MLCC, within LARA, to issue social district permits. A \$250 fee would be established for the social district permit. Revenues from this fee would be deposited to the Liquor Control Enforcement and License Investigation Revolving Fund, which is appropriated for the MLCC's enforcement of the Michigan Liquor Control Code and associated rules and for license investigations. It is unclear what the costs of administration would be for the MLCC, so the net fiscal impact is presently indeterminate. The bill would create administrative responsibilities for local governments that choose to designate a social district, requiring the establishment of local management and maintenance plans, maintenance of commons areas, commons area signage, and approval of social district permit applications. The magnitude of these costs for local units of government is presently indeterminate.

**House Bill 5811** would not have a significant fiscal impact on LARA.

**Senate Bill 942** would have a significant fiscal impact on LARA and on state funds. The MLCC, within LARA, would be responsible for establishing a reporting method and form for on-premises retailers that purchase spirits from specially designated distributors under the bill. This action is not expected to result in any significant cost for the MLCC.

The bill would increase the amount of the existing 17% discount given to on-premises licensees on uniform liquor prices. Under the bill, the discount would be increased to 23% for the 12 months following the bill's enactment date. The increased discount would reduce revenues to the Liquor Purchase Revolving Fund (LPRF), which is the state's enterprise fund for the wholesaling of liquor. The net revenue of the LPRF lapses to the state's general fund (GF/GP), so the bill would ultimately result in a reduction to GF/GP revenue. The exact amount of this reduction is presently indeterminate.

The impact of refunds to wholesalers by liquor manufacturers would be indeterminate, as it would depend on the volume of liquor subject to refund.

## ***ARGUMENTS:***

### ***For:***

The bills will not solve all of the issues created for bars and restaurants by the COVID-19 pandemic, but supporters believe they will give many bars and restaurants a fighting chance. House Bill 5871 allows for the creation of social districts by local governments in which alcohol purchased from adjacent establishments can be consumed in common areas. Consumers can take food, and alcoholic beverages purchased from establishments with a social district permit, to the common area for consumption. The social districts may enable smaller establishments and those without an outdoor area for tables to serve a higher volume of customers. In addition, social districts can provide a place where friends, family, and tourists can gather to enjoy food and drink offerings in a safe manner. The approach is not novel, as similar districts already exist in Ohio.

### ***For:***

House Bill 5811 allows bars and restaurants, and manufacturers that hold tasting room permits and licenses, to also sell cocktails under certain conditions, directly or by a delivery service. Tap beer can already be sold in growlers, and on-premises licensees who also hold a specially designated merchant license (SDM) can sell beer and wine for off-premises consumption. Under the bill, a person ordering take-out service for pickup or delivery can also order a beverage containing spirits, such as a gin and tonic or a margarita. Conditions do apply, such as certain specifications for the beverage container and delivery only to a person who is at least 21 years old. Besides the potential for boosting revenue to cash-strapped businesses, the ability to order a favorite drink pairing with a favorite food for pickup or delivery may be welcomed by those who prefer, or need, to limit public outings. As of early August 2020, at least 33 other states had adopted “cocktails to go” legislation in response to the pandemic’s negative impact on the food service industry.

### ***For:***

The last bill in the package, Senate Bill 942, gives a boost to on-premises licensees by increasing the discount on spirits purchased from the MLCC by an additional 6% (from 17% to 23%) until July 2021 to help with the loss of revenue incurred by stay-at-home orders and in-dining capacity limitations. The bill also enables on-premises licensees to have more flexibility in purchasing spirits from package liquor stores, as well as slightly increasing the amount that may be purchased in a calendar year. On-premises licensees order spirits directly from the MLCC. If they run out of a particular brand before their next delivery date, they have been able to purchase limited amounts per month from a specially designated distributor (SDD). The bill instead establishes a yearly cap of 120 liters, which will allow bars and restaurants to make emergency purchases as needed whenever a sudden shortage happens. A licensee must report those purchases in the month in which they are made. In addition, distillers and manufacturers with tasting rooms can sell their mixed spirit drink on those premises, restaurants and bars can offer two-for-one drinks under certain conditions, and wholesalers can get a refund from manufacturers for beer and wine in certain situations. The reforms made by the bill should provide much needed relief to many sectors of the food service and liquor industries.

### ***Against:***

Enthusiasm for the legislation is not universal. Making alcohol easier to access is problematic for who have a substance use disorder. Reportedly, alcohol sales have increased during the

pandemic, and excessive alcohol, coupled with increased social isolation, may further increase rates of domestic and workplace violence, criminal activity, drunk driving, and suicide. Expansion of home delivery of alcohol may, despite requiring verification of age of the person accepting the delivery, increase underage drinking. Alcohol consumption is also associated with mental health disorders and with the spread of both communicable and noncommunicable diseases, all of which can lower immune function and make people more susceptible to infection by the COVID-19 virus. In light of these concerns, and the impact of restrictions on social gatherings that make attending support groups difficult, the bills are ill-timed. Moreover, other existing laws regarding sales of alcohol should be sufficient for bars and restaurants to devise creative ways to increase sales of food and alcohol necessary to stay in business.

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