

Legislative Analysis



LIQUOR CONTROL CODE AMENDMENTS

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

House Bill 5781 (H-3) as passed by the House
Sponsor: Rep. Michael Webber

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

House Bill 5811 (H-6) as passed by the House
Sponsor: Rep. Sarah Anthony

1st Committee: Regulatory Reform
2nd Committee: Ways and Means

Senate Bill 942 (H-5) as passed by the House
Sponsor: Sen. Aric Nesbitt

House Committee: Ways and Means
Senate Committee: Regulatory Reform

Complete to 6-27-20

SUMMARY:

House Bills 5781 and 5811 and Senate Bill 942 would 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)
- 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)
- Increase, from 17% to 23%, the discount allowed to on-premises licensees on liquor bought from the state, for the 12 months after the bill is enacted. (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2020, allow manufacturers to refund or replace purchases of beer or wine by wholesalers when the beer or wine has gone out of date or when the wholesaler has refunded or replaced a retailer's purchase for similar reasons.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)

House Bill 5781 would 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 would mean 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

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

Local governmental unit would mean a city, township, village, or charter authority.

Commons area would mean 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 would not include the licensed premises of any qualified licensee.

The governing body could not designate a social district that closed a road without the prior approval of the road authority with jurisdiction. The governing body of the local governmental unit would have to 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 would have to maintain the commons area in a way that protected the safety and health of the community. The governing body could revoke the social district designation, after at least one public hearing on the proposed revocation, if it determined that the commons area was a public nuisance or threatened the health, safety, or welfare of the public. A designation or a revocation would have to be filed with the MLCC.

Social district permit

A qualified licensee whose licensed premises were shared by and contiguous to a commons area in a designated social district could obtain an annual social district permit from the MLCC. A social district permit would allow the permittee to sell alcohol for consumption within the confines of a commons area as long as the permittee only sold and served alcoholic liquor on its licensed premises and only served alcohol to be consumed in the commons area in a container meeting 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 bought a container of alcoholic liquor from a social district permittee as described above could take the container from the permittee’s premises and into the commons area but could not 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 would be limited to the legal hours for the sale of alcohol by the permittee.

A social district permit would have to be issued for the same period and be renewed in the same manner as an applicant’s on-premises license. The MLCC would have to develop an application for a social district permit. The permit fee would be \$250, which would be 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 would have to approve a permit before an application could be made to, or a permit granted by, the MLCC.

Finally, if the MLCC issued a special license to a special licensee located in a social district, the special licensee could not sell and serve alcohol under the special district permit while the special license was in effect.

The bill’s provisions would no longer apply after December 31, 2024.

MCL 436.2021 and proposed MCL 436.1551

House Bill 5811 would 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* would have the same meaning as in HB 5781, above.)

Under the bill, notwithstanding anything in the code to the contrary, a qualified licensee could 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 would mean a clean, sealable container that is for the sale of alcoholic liquor for consumption off the premises, that has a liquid capacity that does not exceed one gallon, and that is sealed after filling with a substance or device that fully closes off the container 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 could deliver alcoholic liquor to a *consumer* in the state under all of the following conditions:

- The qualified licensee complies with all laws of the state, including the prohibition on alcohol sales 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 would have to provide identification 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 retailer, the alcoholic liquor is delivered by an employee of the qualified licensee or by a *third party facilitator service*.
- If the qualified licensee is a manufacturer, the alcoholic liquor is delivered by an employee of the qualified licensee.

Consumer would mean 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 could not sell alcoholic liquor in its original packaging under these provisions, except as otherwise allowed under the code.

The bill’s provisions would no longer apply after December 31, 2025.

Proposed MCL 436.1537a

Senate Bill 942 would amend the Michigan Liquor Control Code as described below.

Sales of spirits

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

The bill would instead allow a specially designated distributor to sell up to 120 liters of spirits to an on-premises retailer during a calendar year and allow 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 would have to 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 would have to establish the method and form for electronic reporting of these purchases within 30 days after the effective date of the bill. The MLCC could not require a retailer to submit a report in less than monthly intervals and could not require a report for a month when such purchases were not made.

Discount

Currently, specially designated distributors and on-premises licensees can deduct 17% from the price of alcoholic liquor bought from the state. Under the bill, for 12 months after the bill's enactment date, on-premises licensees would be entitled to a 23% discount on those purchases.

Mixed spirit drink manufacturer tasting rooms

The bill would allow a small distiller¹ or distiller that also holds a mixed spirit drink manufacturer license to do all of the following, subject to the applicable 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 could 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.

Two-drink specials

Currently, an on-premises licensee cannot 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 are served at one time, the second must cost the same as the first.

¹ 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.

The bill would amend 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 could 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 could not sell alcoholic liquor to an individual under these provisions for a price that is less than the licensee's cost for the alcoholic liquor.

MCL 436.1205 et seq.

The three bills are tie-barred to one another, and SB 942 is also tie-barred to HB 5343. A bill cannot take effect unless every bill to which it is tie-barred is also enacted.

FISCAL IMPACT:

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, 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.

POSITIONS:

A representative of the Michigan Restaurant and Lodging Association testified in support of the bills. (6-17-20)

The following entities indicated support for the bills (6-17-20):

- Michigan Licensed Beverage Association
- Bedrock
- Michigan Spirits Association

Representatives of the following entities testified in support of HB 5781:

- Cotton Brewing (6-17-20)
- Grand Rapids Chamber (6-3-20)
- Barfly Ventures (6-3-20)
- Downtown Grand Rapids, Inc. (6-3-20)

The following entities indicated support for HBs 5781 and 5811:

- City of Grand Rapids (6-17-20)
- Detroit Regional Chamber (6-17-20)
- Traverse City Tourism (6-17-20)
- Saginaw Chamber of Commerce (6-17-20)
- Northern Michigan Chamber Alliance (6-17-20)
- Bay Area Chamber of Commerce (6-17-20)
- Lansing Regional Chamber (6-17-20)
- Southwest Michigan First (6-17-20)
- Midwest Independent Retailers Association (6-3-20)

The following entities indicated support for HB 5781:

- Michigan West Coast Chamber of Commerce (6-17-20)
- Muskegon Lakeshore Chamber of Commerce (6-17-20)
- Lakeshore Advantage (6-17-20)
- The Chamber of Grand Haven, Spring Lake & Ferrysburg (6-17-20)
- Midland Business Alliance (6-17-20)
- City of Muskegon DDA (6-17-20)
- Michigan Municipal League (6-3-20)
- City of Muskegon (“in concept” 6-3-20)
- Michigan Downtown Association (6-3-20)
- Michigan Chamber of Commerce (6-3-20)
- Oakland Community College (6-3-20)
- Ilitch Holdings (6-3-20)

The following entities indicated support for HB 5811:

- Downtown Grand Rapids, Inc. (6-17-20)
- Grand Rapids Chamber (6-17-20)
- R Street Institute (6-3-20)

The Michigan Liquor Control Commission indicated a neutral position on the bills.
(6-17-20)

The Michigan Council on Alcohol Problems indicated opposition to HBs 5781 and 5811.
(6-3-20)

Michigan Alcohol Policy indicated opposition to HB 5781. (6-3-20)

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Marcus Coffin

■ 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.