

# Legislative Analysis

---



## **PARTIALLY CONSUMED WINE BOTTLE**

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

**Senate Bill 199 (Substitute H-1)**

**Sponsor: Sen. Jud Gilbert, II**

**House Committee: Regulatory Reform**

**Senate Committee: Economic Development, Small Business and Regulatory Reform**

### **First Analysis (4-26-05)**

**BRIEF SUMMARY:** The bill would allow a diner to take home from a restaurant an unfinished bottle of wine.

**FISCAL IMPACT:** There is no fiscal impact on state or local government.

### **THE APPARENT PROBLEM:**

While Michigan law prevents diners from taking home an unfinished bottle of wine, over 30 states allow diners to do so if the restaurant first reseals the bottle. Some believe that Michigan's ban should likewise be lifted. Proponents of the measure feel that the current law may inadvertently encourage some restaurant patrons to over-imbibe and discourage others from ordering higher quality wines) for fear of "wasting" what can't be finished during the dinner (which hurts restaurant owners. Legislation has been offered to address this issue.

### **THE CONTENT OF THE BILL:**

Currently, alcohol sold for consumption on the licensed premises is not allowed to be removed from those premises. The bill would amend the Michigan Liquor Control Code to allow a diner who had only partially consumed a bottle of wine with a meal to remove that bottle of wine if it had been resealed according to the bill's provisions.

Specifically, a vendor licensed to sell wine on the premises could allow a person who had purchased a meal and who had purchased a bottle of wine with that meal to remove the unfinished bottle from the premises when upon leaving. Additional bottles of unopened wine could not be removed unless the vendor was also licensed to sell wine or beer for off-premises consumption (a specially designated merchant or SDM). To be in compliance with the bill, the liquor licensee or a clerk, agent, or employee would have to reinsert a cork so that the top of the cork was level with the lip of the bottle.

In addition, if transporting the resealed wine bottle via a motor vehicle, the person would have to comply with Section 624a of the Michigan Vehicle Code (MCL 257.624a). In general, Section 624a prohibits transporting alcohol in an open or uncapped container or in a container with a broken seal within the passenger compartment of a vehicle. If a vehicle does not have a trunk or a compartment separate from the passenger area, the

container must be enclosed or encased and not readily accessible to the vehicle's occupants. A violation is a misdemeanor.

MCL 436.2021

***HOUSE COMMITTEE ACTION:***

The committee adopted a substitute to clarify that it would be the restaurant worker, and not the dinner patron, that recorks the opened wine bottle for removal from the licensed premises.

***ARGUMENTS:***

***For:***

Currently, a diner who orders a bottle of wine with a meal but cannot finish the entire amount must leave the partially consumed bottle at the restaurant. Some individuals may then drink more than they would otherwise or avoid ordering higher quality wines in an attempt to not waste what they have paid for. The bill would resolve the issue by allowing a diner who had ordered wine with a meal to take home a partially consumed bottle of wine if a restaurant employee resealed the bottle – a practice followed by 30 other states. Further, the bottle would then have to be transported in the trunk of the vehicle (or enclosed or encased and not readily accessible to the occupants) as required under provisions of the Michigan Vehicle Code. Even bottles that are originally sealed with a plastic cork can be resealed with a cork that can be cut even with the lip of the bottle to prevent easy removal. A restaurant could not allow a diner to remove unopened bottles of wine from the licensed premises unless the vendor also was licensed to sell beer and wine for off-premises consumption (a specially designated merchant or SDM license).

Proponents say the bill has several benefits. First, diners would get what they paid for – an entire bottle of wine. Second, diners may be more likely to order more expensive wines if they could enjoy the leftovers later at home. This would help restaurant owners, many of whom are struggling financially in the state's sluggish economy. Most important, the bill would remove any incentive to diners to try to get their "money's worth" by finishing the last drop, a practice which may result in the diner driving impaired or intoxicated.

***Response:***

Some states require that after the wine bottle is recorked, it must be put in a one-time-use, tamper-proof bag as proof that the diner is not drinking it in his or her vehicle. Perhaps a similar requirement could be written into the bill or encouraged by the associations representing restaurant owners and wine vendors.

***POSITIONS:***

A representative of the Michigan Restaurant Association testified on behalf of the bill.  
(4-26-05)

A representative of the Michigan Licensed Beverage Association indicated support for the bill. (4-26-05)

A representative of the Wine Institute indicated support for the bill. (4-26-05)

The Department of Labor and Economic Growth is neutral on the bill. (4-26-05)

Legislative Analyst: Susan Stutzky  
Fiscal Analyst: Richard Child

---

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.