Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986

Senate Bill 79 (Substitute S-7 as reported by the Committee of the Whole) *(as passed by the Senate)*
Senate Bill 279 (as reported without amendment) *(as passed by the Senate)*
Sponsor: Senator Goeff Hansen
Committee: Regulatory Reform

Date Completed: 5-2-13

RATIONALE

The Michigan Liquor Control Code generally permits a licensed wine maker to sell wine directly to customers only via direct shipment, in a licensed restaurant owned by the wine maker, and where the wine maker is licensed to manufacture wine. A wine maker also may conduct tastings in a restaurant owned by the wine maker, where the wine maker is licensed to manufacture wine, and on the licensed premises of a specially designated merchant (someone licensed to sell beer and wine for off premises consumption) under certain conditions.

Many people believe that small Michigan wine makers need more public exposure and opportunities to conduct wine tastings and sell wine at retail. It has been suggested that the Code should allow small wine makers to engage in these activities at farmer's markets.

CONTENT

Senate Bill 79 (S-7) would amend the Michigan Liquor Control Code to provide for a farmer's market permit that would allow a qualified small wine maker to conduct wine tastings and sell wine at a farmer's market for consumption off the premises.

Senate Bill 279 would amend the Michigan Liquor Control Code to add to the classes of vendors who may sell alcohol at retail a small wine maker, or an out-of-State entity that was the substantial equivalent of a small wine maker, holding a farmer's market permit, where wine could be sampled and sold at a farmer's market for consumption off the licensed premises.

Senate bill 79 (S-7) would take effect 60 days after its enactment, and Senate Bill 279 would take effect 90 days after its enactment. Senate Bill 279 is tie-barred to Senate Bill 79.

A more detailed description of Senate Bill 79 (S-7) follows.

The bill would authorize the Liquor Control Commission to issue an annual farmer's market permit to a qualified small wine maker as part of an approved license. The permit holder could conduct tastings and sell, at retail at a farmer's market, wine produced by that qualified small wine maker. "Qualified small wine maker" would mean a small wine maker, or an out-of-State entity that is the substantial equivalent of a small wine maker, that manufactures or bottles not more than 5,000 gallons of wine in one calendar year.

The Commission would have to charge an applicant a $25 permit fee for each farmer's market location. The applicant would have to provide documentation that both the local police agency where the farmer's market was located and the farmer's market manager approved the proposed activity. A permit would be nontransferable.

The Commission could issue only one farmer's market permit in a county where the qualified small wine maker was located, for each 1,500 of population or fraction of

1,500 in that county. Notwithstanding this quota provision, the Commission could not limit the number of permits a qualified small wine maker obtained, but an applicant could not apply for more than five separate sites at one time. Current restrictions for sites within 500 feet of a church or school would not apply to these permits.

Permit holders would have to do the following:

-- Limit tastings and sales to an exclusive area, in a manner prescribed by the Commission, under control of the permit holder, as verified by the farmer's market manager.
-- Limit tasting samples per customer to three servings of two ounces or less of wine within a 24-hour period.
-- Allow only employees who had completed a Commission-approved server training program to conduct tastings and sales.
-- Provide wine for sales, or tastings, only from the stock of the permit holder.
-- Remove wine sold or used for tastings from the premises immediately after the farmer's market had concluded.

The bill would prohibit wholesalers from conducting or participating in events relating to a farmer's market permit.

Two years after the enactment date of the bill, the Commission would have to submit a report assessing the continued issuance of farmer's market permits to Senate and House of Representatives standing committees concerned with issues involving liquor control, the House Fiscal Agency, and the Senate Fiscal Agency. The report would have to include the following: the number of farmer's market permit applications received each year, the number of applications approved each year, and the number of applications approved in each county.

Proposed MCL 436.1415 (S.B. 79)
MCL 436.1537 (S.B. 279)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The bills would provide greater access to Michigan-produced wine, promoting both the Michigan wine industry and agritourism.

Allowing wine makers to offer wine and wine tastings at farmer's markets would expand their opportunities to reach consumers, resulting in better sales and name recognition for many small wine makers. This, in turn, would strengthen the Michigan wine industry. Small wine makers generally find it difficult to reach consumers because, unlike large wine makers, they typically cannot afford advertising, do not have wholesale distributors, and lack sufficient retail shelf space. At farmer's markets, consumers would become more familiar with and aware of local wines, and small wine makers could receive instant feedback from customers. Further, since many Michigan wine makers use ingredients grown in Michigan, creating awareness of Michigan's small wine makers also would promote Michigan's agriculture industry. Struggling farmers could produce wine as an additional source of revenue. According to the Michigan Grape and Wine Industry Council, Michigan wineries annually produce more than 1.0 million gallons of wine, attract more than 800,000 tourists, and contribute more than $300.0 million to the economy.

In Massachusetts, a law similar to this proposal took effect in 2011. According to a survey conducted by the Massachusetts Department of Agriculture, that state's wineries had a 66% increase in sales in 2011. Wineries reported increased traffic. They also planned to create more jobs and expand production. These benefits have been attributed to allowing wine sales at farmer's markets and agricultural events.

Response: The scope of eligible wineries would be too narrow. The bills should allow all wineries to participate in farmer's markets. The current definition of "small wine maker" refers to a wine maker that manufactures or bottles up to 50,000 gallons of wine in one year. According to the Liquor Control Commission, 195 small wine maker licenses had been issued as of February 26, 2013. Reportedly, only about 60 of these licensees produce 5,000 gallons or less and would meet the standard for a qualified small wine maker. The bills would impose an arbitrary line to determine eligibility for farmer's market permits, putting many wine makers at a disadvantage.

The 5,000-gallon threshold would leave out many Michigan wineries that reportedly have expressed interest in obtaining farmer's market permits. Further, small wine makers with production below 5,000 gallons a year could be too small and lack the required resources to promote their products at farmer's markets. As a result, the bills could exclude wineries that appear to have the most to benefit from farmer's market permits.

With regard to the potential benefits to the Michigan wine industry, it should be noted that the Massachusetts law for farmer's market permits applies to all licensed farmer wineries, and does not impose a production qualifier similar to the 5,000-gallon limit under the bills.

Opposing Argument

Farmer's markets are a form of family entertainment, and alcohol should have no place in them. Allowing wine tastings and sales at these events would expose families and children to people drinking in public. Families should have a place where they can enjoy time together without alcohol producers pitching their products.

Opposing Argument

Providing another type of sales outlet for alcohol producers would be excessive and promote abuse. Wine makers already have several ways to reach the market, including sales through licensed retailers, tastings at retail establishments, on-site and off-site winery tasting rooms, and direct shipping. Reportedly, about 16,000 outlets sell alcohol in Michigan, so finding alcohol to purchase is not a problem for consumers. Increasing the density of alcohol establishments also would result in competition for retailers who have made significant investments in their communities. According to a 2002 study by the People-to-People Health Foundation, people tend to abuse alcohol less when availability is restricted.

Legislative Analyst: Glenn Steffens

FISCAL IMPACT

The bills would have an indeterminate fiscal impact on the Department of Licensing and Regulatory Affairs and local units of government. Under the bills, qualified small wine makers would be allowed to obtain a permit to conduct tastings and sell at retail at farmer's markets. These permits would cost $25 per location. Approximately half of the fee revenue would go to the Michigan Liquor Control Commission and the other half to local law enforcement through grants.

To the extent that the cost to issue the permits was less than the revenue received, the bills would have a positive fiscal impact on the Commission; the opposite is also true. Senate Bill 79 (S-7) would require the permits to be approved by local law enforcement. If revenue from the permits were greater than the cost to make approval decisions, the fiscal impact on local law enforcement departments would be positive. It is unknown at this time whether the cost of permit issuance and approval would exceed revenue received from the permits, so the fiscal impact is indeterminate.

Fiscal Analyst: Josh Sefton

A1314\s79a