

Legislative Analysis



MICHIGAN CRAFT BEVERAGE COUNCIL

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<http://www.house.mi.gov/hfa>

House Bill 4667 as enacted
Public Act 154 of 2018
Sponsor: Rep. Brandt Iden

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

Senate Bill 440 as enacted
Public Act 155 of 2018
Sponsor: Sen. Goeff Hansen

House Committee: Regulatory Reform
Senate Committee: Regulatory Reform

Complete to 10-8-18

BRIEF SUMMARY: House Bill 4667 renames the Grape and Wine Industry Council as the “Michigan Craft Beverage Council,” revises the council’s membership, and modifies its duties.

Senate Bill 440 amends the Michigan Liquor Control Code to create the Michigan Craft Beverage Council Fund, restrict how money in the Fund can be expended, and provide for the money in the former Grape and Wine Industry Council account to be transferred into the Fund.

The bills took effect October 1, 2018.

FISCAL IMPACT: See *Fiscal Information*, below, for a detailed discussion on the fiscal implications of the legislation.

THE APPARENT PROBLEM:

Michigan is said to rank in the top 10 in the nation in wine grape production and for production of still wine, in addition to producing many prize-winning wines. Some feel that this may be due in part to the efforts of the Grape and Wine Industry Council in funding research and promoting Michigan wine products and tourism. Efforts of the Council are funded by fees collected by the Michigan Liquor Control Commission from some licensed entities. Over the past several years, however, the public’s taste for craft beers, alcoholic ciders and sodas, wines made from fruits other than grapes, and craft distilling has grown. The change in consumer interest has led some to feel that the mission of the Council should be broadened to embrace the entirety of the craft beverage phenomenon and work toward growing the entire industry, not just one segment of it. Moreover, though the license fees of brewers and distillers help fund the Council, they currently have no representation on it.

THE CONTENT OF THE BILLS:

House Bill 4667 amends Section 303 of the Michigan Liquor Control Code (MCL 436.1303). Executive Reorganization Order (ERO) 2014-2 abolished the Grape and Wine Industry Council in existence at the time and created a new Grape and Wine Industry Council with a revised membership. The bill incorporates much of ERO 2014-2 and makes further revisions to the statutory provisions pertaining to the Council. The bill also changes the membership of the Council.

Significantly, the bill renames the Council as the Michigan Craft Beverage Council to include other craft beverages, such as beer, cider, and spirits. (“Cider” is defined in the bill to mean an alcoholic beverage made from the fermentation of juice from primarily apples or pears, or both, which contains at least one-half of 1% and up to 8.5% of alcohol by volume. Cider would include both still and carbonated beverages and could contain other fruits, spices, botanicals, or other flavors.)

Michigan Craft Beverage Council Membership

The bill revises the Council membership to consist of the director of the Department of Agriculture and Rural Development (MDARD) as a nonvoting member, who will also serve as chairperson, and the following voting members appointed by the governor:

- A representative of retail food establishments that hold an SDM license and sell Michigan wines or beer.
- A representative of restaurants that hold a Class C license and serve Michigan wines, beer, or spirits.
- Two representatives of wine makers.
- A representative of wine makers that primarily manufacture cider.
- A representative of large brewers, defined in the bill as a brewer that produces at least 60,000 barrels of beer but not more than one million barrels of beer per year. In determining this barrel threshold, all brands and labels of a brewer, regardless of whether brewed in Michigan, must be combined, and all facilities for production of beer owned or controlled by the same person are treated as a single facility.
- One of the following:
 - A representative of micro brewers.
 - A representative of brewpub license holders.
 - A representative of small distillers.
 - A representative of distillers that manufacture more than 60,000 gallons of spirits per year.

Members appointed by the governor must have their principal place of business located in the state and cannot be a lobbyist or a lobbyist agent as those terms are defined in Section 5 of Public Act 472 of 1978.

Members appointed by the governor will serve 3-year terms (or until a successor is appointed). Initial terms will be staggered as specified in the bill. A nongovernmental member could (instead of being required to) receive \$50 per day for each day spent in actual attendance at Council meetings and traveling expenses while on Council business.

Prior to October 1, 2018, the effective date of the bill, the membership of the Council under ERO 2014-2 consisted of the following:

- Three wine makers appointed by the governor.
- A wine grape grower appointed by the governor.
- The Chief Executive Officer of the Michigan Economic Development Corporation, or a designee.
- The Director of the Department of Agriculture and Rural Development, or a designee, who shall serve as chairperson of the council.
- A staff member of Michigan State University appointed by, and serving at the pleasure of, the Dean of the College of Agriculture and Natural Resources of Michigan State University.
- The Chairperson of the Liquor Control Commission, or a designee, as an ex officio member.
- A person who operates a retail food establishment that holds a specially designated merchant license and sells Michigan wines, or a person who operates a restaurant that holds a Class C license and serves Michigan wines, appointed by the governor.
- A beer and wine wholesaler who markets Michigan wine, appointed by the governor.
- Two members of the public, appointed by the governor.

Council duties

The bill retains a statutory requirement that the Council maintain accurate books and records and that all money received by the Council be used to implement and enforce Section 303. In addition, the bill will allow the Council to accept money from any source for the purpose of carrying out Section 303, with all money received forwarded to the state treasurer for deposit into the Michigan Craft Beverage Council Fund created in a new Section 303a added by Senate Bill 440.

As revised by the bill, and subject to an appropriation, the Council is required to direct MDARD to award and administer grants for the following:

- Research into both of the following:
 - Fruits used in winemaking and wine.
 - Hops, barley, beer, and spirits.
This would include at least methods of planting and growing, insect and disease control, marketing, distribution, advertising, and product development.
- Projects that do one or more of the following:
 - Provide information relative to proper methods of handling and selling fruits used in winemaking and wines to the wine industry.
 - Provide information relative to proper methods of handling and selling hops, barley, beer, spirits, and mixed spirit drinks to the brewing and distilling industries.
 - Provide for market surveys and analyses for purposes of expanding existing markets (and creating new and larger markets) for Michigan agricultural

products such as fruits, hops, and barley used in the production of wine, cider, beer, spirits, and mixed spirit drinks.

- Provide for the promotion of the sale of Michigan agricultural products such as fruits, hops, and barley used in the production of wine, cider, beer, spirits, and mixed spirit drinks for the purpose of maintaining or expanding present markets and creating new and larger domestic and foreign markets.
- Develop and administer financial aid programs to growers of fruits used in winemaking, hops growers, and barley growers to encourage increased planting of desirable fruit varieties in microclimates determined to provide the best conditions for producing quality wines and quality beer.
- Establish educational partnerships to benefit the beer, wine, cider, spirits, and mixed spirit drink industries.

The bill also requires the Council to do the following:

- Apply for and accept grants or contributions from the federal government or any of its agencies, the state, or other public or private agencies to be used for any of the purposes described in Section 303 and to do any and all things within its express or implied powers necessary or desirable to secure that financial or other aid or cooperation in the carrying out of any of the purposes of Section 303.
- Invite the chief executive officer of the Michigan Economic Development Corporation (MEDC) or his or her designee to attend at least one Council meeting annually to inform the Council about partnership activities and opportunities related to the marketing and promotion of Michigan agricultural products such as fruits, hops, and barley.
- Invite the director of Licensing and Regulatory Affairs (LARA) to attend at least one Council meeting annually to inform members about funding activities affecting the Council.
- Prepare and adopt an annual budget.

Based on information provided by MEDC and LARA, the Council could do either or both of the following:

- Take actions to enhance the marketing and promotion of Michigan agricultural products, such as fruits, hops, and barely, that are used in the production of wine, cider, beer, spirits, and mixed spirit drinks.
- Annually review and adopt strategies for marketing and promotion of those products.

The bill retains the authority of the Council to promulgate rules under the Administrative Procedures Act to implement and enforce Section 303 and the limitation of not adopting rules that conflict with a departmental rule promulgated by the Michigan Liquor Control Commission.

Lobbying

Under the bill, the Council is prohibited from engaging in lobbying, although the Council, a Council member, or Council employee would not be prohibited from providing technical information to the Legislature or to MDARD, regardless of whether the person is appearing

before an officially convened legislative committee or MDARD hearing panel, if the technical information is related to the Council's duties. "Lobbying" and "technical information" mean those terms as defined in Section 5 of Public Act 472 of 1978 (MCL 4.415), which regulates political activity and regulates lobbyists, lobbyist agents, and lobbying activities.

In addition, the bill would not prevent the Council from establishing a commodity committee under the Agriculture Commodities Marketing Act. ("Agricultural commodities" include, among other things, horticultural and agricultural products, livestock products, commercial fish or fish products, Christmas trees, maple syrup, bees, and seeds produced in the state.)

Senate Bill 440 would add Section 303a to the Michigan Liquor Control Code to create the Michigan Craft Beverage Council Fund within the state treasury. Currently, all license and license renewal fees (other than retail license and license renewal fees and wholesale vendor license and license renewal fees) are credited to the Grape and Wine Industry Council to be used to implement and enforce Section 303 of the Code (the section amended by HB 4667). The bill instead would direct that the fees be credited to the Michigan Craft Beverage Council Fund.

Under the bill, the state treasurer could receive money or other assets from any source for deposit into the Fund, would direct the Fund's investment, and would have to credit to the Fund interest and earnings from Fund investments. Money in the Fund at the end of the fiscal year will remain in the Fund and not lapse to the general fund.

Money from the Fund must be expended annually, upon appropriation, for the following purposes:

- Not more than \$80,000 may be used by the Department of Agriculture and Rural Development to administer the grants program under Section 303 of the Code (as revised by House Bill 4667).
- After the above expenditure is made, not less than 50% of the money expended is required to be used for grants concerning research into fruits used in wine making and hops, barley, beer, and spirits, including such things as methods of planting and product development.
- Certain projects funded by grants described in Section 303(7)(b), per proposed amendments by House Bill 4667. Regarding such grants, the bill allows the Council to expend the money for the purposes and subject to the conditions for which it was received.
- For the Council to carry out its responsibilities under the Code.

Further, any money in the former Grape and Wine Industry Council account on October 1, 2018 must be transferred to the Michigan Craft Beverage Council Fund.

BACKGROUND INFORMATION:

Previous legislation

The bills are similar to legislation introduced in the 2015-2015 legislative session— House Bill 5025 and Senate Bill 671.

Wine industry

In calendar year 2017, Michigan vineyards produced 7,900 tons of wine grapes valued at \$10.5 million (based on U.S. Department of Agriculture, National Agricultural Statistical Services data). This appears to be a peak both in terms of tons of grapes produced and value of wine grape production.

Also in calendar year 2017, Michigan wineries bottled slightly over 3.0 million gallons of wine (based on U.S. Department of Treasury, Alcohol and Tobacco Tax and Trade Bureau reports). This also appears to be a peak. In 2017, Michigan ranked tenth among states in wine production as measured by gallons of wine bottled.

The Michigan Grape and Wine Council identified 140 wineries in Michigan designated as “Producers of Michigan Wine” for promotion purposes. (May 2, 2018 Council minutes.)

History of the Michigan Grape and Wine Industry Council

The Michigan Grape and Wine Industry Council was established in 1998 under Section 303 of the Michigan Liquor Control Code of 1998 as an agency within the Michigan Department of Agriculture. Executive Reorganization Order 2014-2 abolished the statutory Michigan Grape and Wine Council and transferred all of the statutory authority, powers, duties, functions, and responsibilities under Section 303 of the Code to a new Michigan Grape and Wine Industry Council under the Michigan Department of Agriculture and Rural Development (MDARD). Prior to the enactment of House Bill 4667, under Section 303 the Council was directed to: provide for research on wine grapes and wines; provide the wine industry with information on the proper methods of handling and selling wine grapes and wine; provide for market surveys and analysis; promote the sale of Michigan wine grapes and wines; and develop and administer financial aid programs to wine grape growers to encourage the planting of desirable wine grapes in Michigan.

The Michigan Liquor Control Code establishes a number of licensing and regulatory fees. Section 543 of the Code provides for the distribution of fee revenue. Retail license and renewal fees have been earmarked for enforcement of the licensing and regulatory enforcement provisions of the Code. Other license and license renewal fees, with the exception of wholesale vendor license and license renewal fees, were earmarked to the Michigan Grape and Wine Industry Council.

The fees earmarked to the Grape and Wine Industry Council in Section 543 were designated in MDARD budget as “non-retail liquor fees.” Between FY 2013-14 and FY 2015-16, these non-retail liquor fees generated approximately \$800,000 annually.

[Senate Bill 929 of the 2015-2016 legislative session, enacted as Public Act 434 of 2016, amended Section 543 to exclude “wholesale vendor license and license renewal fees” from the non-retail licensing and regulatory fees earmarked to the Michigan Grape and Wine Industry Council. This change, effective January 1, 2017, reduced revenue to the Michigan Grape and Wine Industry Council by an estimated \$170,000 per year.]

Senate Bill 440 creates a new Michigan Craft Beverage Council Fund within the state treasury and earmarks this “non-retail liquor fee” revenue that had formerly been credited to the Michigan Grape and Wine Industry Council to the new fund.

In FYs 2016-17 and 2017-18, the MDARD budget included \$875,600 and \$927,000, respectively, in non-retail liquor fees for ongoing support for the Grape and Wine Industry Council. The FY 2018-19 budget appropriates \$917,200 from the Michigan Craft Beverage Council Fund established in Senate Bill 440 for the Michigan Craft Beverage Council and related department support services.

FISCAL INFORMATION:

Impact on the Council

Neither Senate Bill 440 nor House Bill 4667 provides for new or increased fee revenue. Without additional funding, the additional program activities established in Senate Bill 440 and House Bill 4667, including the minimum research requirements, would have to be funded out of existing resources.

The required level of funding for research under Senate Bill 440 is higher than that currently expended by the Grape and Wine Industry Council. Currently the Council awards grants, primarily to Michigan State University researchers, to fund various wine grape research proposals.¹ According to Council’s internal budget documents in FY 2016-17, only \$138,785 was provided for “viticulture and enology” research proposals—roughly 15% of the Council’s annual budget. The Council’s FY 2017-18 budget for research proposals is \$136,000. Requiring that the Michigan Craft Beverage Council spend at least 50% of its annual budget on research grants would have a significant impact on Council operations.

Section 221 impact

Note that Senate Bill 440 also amends Section 221 of the Liquor Control Code, which deals with the Liquor Purchase Revolving Fund. Under Section 221, all money received by the Liquor Control Commission must be turned over to the State Treasurer and all money deposited with the State Treasurer must be credited to the Liquor Purchase Revolving Fund for expenditures authorized by the Code (e.g., administering the Code) or be credited to the general fund “to be available for the purposes for which the general fund is available.” Under provisions of the bill, all money would be credited to the Liquor Purchase Revolving Fund but could be subsequently *transferred* to the state general fund as provided by Section 435 of the Management and Budget Act (MCL 18.1435). Changes to this section made by Senate Bill 440 are merely technical changes and would have no fiscal implications. The

¹ See <https://www.michiganwines.com/research>

bill's provisions conform with current practice, where money is first credited to the Liquor Purchase Revolving Fund and is then transferred to the state general fund. In FYs 2015-16 and 2016-17, \$209.6 million, and \$221.4 million, respectively, were transferred from the Liquor Purchase Revolving Fund to the state general fund.

Impact on LARA

House Bill 4667 and Senate Bill 440 would not have a fiscal impact on the Department of Licensing and Regulatory Affairs.

ARGUMENTS:

For:

Perhaps the strongest reason advocates provide for changing the purpose and makeup of the Grape and Wine Industry Council is that not all who currently pay into it are represented either by membership or by function of the Council. Many entities, including brewers and distillers licensed by the Michigan Liquor Control Commission, remit fees that fund Council activities although those activities center solely on the wine industry. To that end, the Council has certainly contributed to the growth and success of Michigan wineries and their products. Now, however, consumers are showing increased interest in other craft beverages—specifically, craft beers and craft distilling.

Merging all parties of the craft beverage industry into one council has the potential to make Michigan one of the top destinations for unique wines, ciders, craft beers, and craft distilling (e.g., blended spirits, added botanicals, etc.). With the bill's emphasis on earmarking at least half of the revenue for research and financial aid to growers, rather than use the bulk of the funding for administrative expenses, as is the current practice, the bill also has the potential to create jobs and spur growth in related fields such as agriculture.

For:

The Council membership will change under House Bill 4667 to concentrate on members representing the craft beverage industry. Research efforts would be expanded to help brewers and distillers grow their industries while continuing to support wine and grape research. For example, the state currently does not raise enough hops and barley to meet the needs of Michigan-based brewers, and propriety restrictions on certain popular varieties of hops grown in the Pacific Northwest mean that Michigan farmers cannot obtain seeds, let alone grow, such varieties. With the bills' potential to ensure that more of the Council's revenue goes to fund research (instead of the lion's share going to administrative and other expenses, as is currently the practice), brewers may see new research projects funded to develop new and desirable varieties of hops, barley, and rye, and information provided for farmers regarding growing those varieties, that could lead to less dependence on ingredients produced in other states and Canada.

Response:

Though on the surface the bills appear to divert more funding into research and product development and marketing that could grow the craft beverage industry in Michigan, the reality is that the new Council will be working with less funding than in the past. This is due in part to Public Act 434 of 2016, which diverted wholesale vendor license and renewal

license renewal fees from the Council to the Liquor Control Enforcement and License Investigation Revolving Fund. Despite attempts to address the issue by capping the amount the Council can spend on administrative functions, reducing the number of members on the Council, and making remuneration to members for attending Council meetings and for expenses in fulfilling Council duties permissive, rather than mandatory, money available to fund the research and development projects necessary to grow and sustain the craft beverage industry appears insufficient for the needs.

Rebuttal:

Still, the bills are an important first step in moving the industry forward. Besides continuing to allow the Council to seek federal funding, such as Specialty Crop Block Grants, that will support ongoing research, research funds could also be used to develop and administer financial aid programs to encourage the planting of desirable varieties of fruit, hops, and barley.

Against:

Currently, the director of MDARD or the director's designee has been a voting member, but House Bill 4667 changes that. Seeing that the purpose of MDARD is to provide oversight of agricultural pursuits in the state and that the agency is a neutral party rather than a member of one segment of the craft beverage industry, some feel that the voting status of the director should be restored. Similarly, a staff person of Michigan State University, which has a global reputation for agricultural research, is currently a member of the Council but will be removed by the bill. With the bill's emphasis on research, a member with ties to a state research university is even more valuable as industry members on the Council debate which research projects should be pursued. Some feel the MSU staff member should be restored to the Council because the employment contracts for academic and support staff at universities typically detail the percentage the person must spend on various aspects of the job. Attending Council meetings would fall outside of the person's job duties unless it were specifically included in a person's academic contract; having attendance at certain meetings included usually entails actually being appointed as a member. Thus, to ensure the continued valuable input of an MSU staff person, the MSU position should be restored.

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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.