

Legislative Analysis



LIQUOR CODE REVISIONS

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Senate Bill 934 (S-3) as reported from House committee
Senate Bill 1138 (H-2) as reported from House committee
Sponsor: Sen. Wayne Schmidt

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

Senate Bill 1139 (H-2) as reported
Sponsor: Sen. Curtis S. VanderWall

Senate Bill 1140 (S-1) as reported
Sponsor: Sen. Jeremy Moss

House Committee: Ways and Means
Senate Committee: Regulatory Reform
Complete to 12-16-20

BRIEF SUMMARY:

Senate Bill 1139 would revise the definitions of several terms, include mixed spirit drink in the definition of “wine” and delete references to that term in numerous provisions, lower the tax rate imposed on the volume of wine now defined as mixed spirit drink sold, and revise certain license categories.

Senate Bill 934 would allow small wine makers to sell and deliver wine now defined as mixed spirit drink to Michigan retailers only if certain conditions were met and the sales to wholesalers and retailers were limited to 31,000 gallons per year.

Senate Bill 1138 would revise the definition of “direct shipper,” prohibit a direct shipper from holding a license in another state that is the substantial equivalent to a retailer license, allow a qualified distiller to sell and deliver its spirits to a retailer licensed to purchase and sell spirits if certain conditions were met, and define “qualified retailer” and “qualified small distiller.”

Senate Bill 1140 would delete references to “mixed spirit drink manufacturer” and “outstate seller of mixed spirit drink.”

DETAILED SUMMARY:

Senate Bill 1139 would amend several sections of the code to do all of the following:

- Revise the definition of “wine” to include mixed spirit drink (and increase the allowable maximum amount of alcohol by volume for that product from 10% to 16%) and eliminate references from various provisions to “mixed spirit drink,” “mixed spirit drink manufacturer,” and “outstate seller of mixed spirit drink.” The product would not qualify for direct sales and shipments by various licensees to consumers or *retailers*.
- Distinguish, in some provisions, *wine* as historically defined (e.g., manufactured by the normal alcoholic fermentation of the juice of sound, ripe grapes, or any other fruit) from *wine* now defined as “mixed spirit drink.”

- Reclassify an outstate seller of mixed spirit drinks license and a manufacturer of mixed spirit drink license issued before May 1, 2021, as an outstate seller of wine license and small wine maker license, respectively, upon the licensee's demonstrating that it will comply with departmental rules applicable to spirits manufacturing and labeling for wine now defined as mixed spirit drink. An outstate seller of wine and small wine maker that respectively sells or manufactures only wine now defined as mixed spirit drink would not be subject to departmental rules applicable to wine manufacturing and labeling for wine that is not now defined as mixed spirit drink.
- Eliminate a requirement to levy and collect a tax at the rate of 48 cents per liter on mixed spirit drink sold in Michigan and instead tax the product at a rate of 20 cents per liter (currently the rate for wine containing more than 16% of alcohol by volume).
- Define *outstate self-distributor* as a person located in another state that is substantially equivalent to a micro brewer, small distiller, or small wine maker licensed by the Liquor Control Commission (LCC) to sell alcohol manufactured outside Michigan directly to a retailer under the code in accordance with departmental rules. An applicant for an outstate self-distributor license would have to submit a copy of its federal basic permit or brewer's notice and its manufacturing license from the state of issuance. The license fee would be \$300 per year, and a licensee would have to pay \$50 for each vehicle used to deliver alcohol to retailers.
- Subject wine makers to the departmental rules applicable to wine manufacturing and labeling for wine (as historically defined) and for spirits manufacturing and labeling for wine now defined as mixed spirit drink. A wine maker could not sell wine now defined as mixed spirit drink directly to a consumer.
- Delete a provision prohibiting the LCC from issuing a license for off-premises consumption sales in conjunction with a license issued under a provision pertaining to licenses for development districts.
- Require a small wine maker to pay \$50 per vehicle used for delivery of wine now defined as mixed spirit drink and a qualified small distiller to pay \$50 per vehicle used to deliver spirits to retailers.
- Specify actions a supplier could take, if certain conditions were met, to assist a consumer to receive alcohol sold by the supplier delivered or shipped directly to the consumer's home or designated location. This would include such things as advertising the name and location of all retailers delivering or direct-shipping the supplier's products. A supplier could not take any of the listed actions unless both of the following conditions were met:
 - The supplier and retailer do not provide or receive a valuable thing (as defined in section 609) in consideration for the supplier taking any of the listed actions.
 - The supplier provides the consumer a list of retailers that will sell, deliver, or direct ship the alcohol to the consumer.

The Michigan Liquor Control Code defines a *retailer* as a person licensed by the Michigan Liquor Control Code to sell alcohol to consumers. The term includes a brewpub, but excludes a manufacturer or supplier who is allowed under conditions of its license to sell to consumers in the state.

A specially designated merchant (SDM) license allows a retailer to sell beer and wine to a consumer for consumption off the licensed premises.

A specially designated distributor (SDD) license allows a retailer to sell spirits to a consumer for consumption off the licensed premises.

MCL 436.1105 et al.

Senate Bill 934 would add a new section to the Liquor Control Code to allow a small wine maker or an equivalent out-of-state entity to sell and deliver the product currently defined as mixed spirit drink (under SB 1139 the product would be defined as a type of wine) that it manufactures to a retailer in the state only if all of the following conditions were met:

- The retailer is not located in a sales territory for which the small wine maker has granted exclusive sales rights to a wholesaler for the sale of any brand or brands of wine it produces.
- Sales and deliveries of the wine are made by the small wine maker's employee and transported and delivered using a vehicle owned by the small wine maker.
- The small wine maker complies with applicable state and federal law and applicable regulatory provisions of the act regarding employees who sell and deliver wine, vehicles used to deliver the wine, price schedules and temporary price reductions, labeling and registration of wine, and payment of taxes.
- Total annual sales do not exceed 31,000 gallons. The 31,000-gallon limit would include all brands and labels of the small wine maker whether sold to a wholesaler or retailer in or outside the state. Not included would be sales to consumers on the licensed premises.

Proposed MCL 436.2303b

Senate Bill 1138 would amend section 203 of the code, which, among other things, regulates direct shippers of alcohol in the state. Generally speaking, a retailer is prohibited from delivering alcohol to the home or business of a consumer or at any location away from the licensed premises. However, a retailer may do so under certain conditions as provided in the act. The bill would instead refer to a "qualified retailer" (defined below). The bill would also do the following:

- Expand the provision allowing a retailer that holds an SDM license to use a common carrier to deliver wine to a consumer within Michigan to include the delivery of beer and refer to a "qualified retailer" instead of a "retailer" throughout section 203. The bill would allow a qualified retailer that holds an SDD license to use a common carrier to deliver spirits. The bill would also require the documentation currently used to verify the age of the person ordering or receiving wine, and that must be available to the LCC upon request, to apply to orders and receipt of beer and spirits.
- Revise the definition of "direct shipper" to mean either of the following:
 - A wine manufacturer that sells, delivers, or imports wine other than wine now defined as mixed spirit drink that it has manufactured, bottled, and registered with the LCC, to consumers in the state through the use of mail order, the

internet, telephone, computer, device, or other electronic means, or sells directly to consumers on the winery premises.

- A wine manufacturer that purchases wine other than wine now defined as mixed spirit drink and further manufactures or bottles it or purchases shiners of wine (not mixed spirit drink) from another wine manufacturer, registers it with the LCC, and sells it to consumers in the state through the means described above.
- Disqualify a wine maker that holds a license in another state that is the substantial equivalent to a retailer license from licensure as a direct shipper. Holding the equivalent of a retail license not including a direct shipper license in a state outside its state of domicile would be grounds for revocation or denial of a direct shipper license.
- Eliminate references to an “outstate seller of mixed spirit drinks.”
- Define the terms *qualified retailer* and *qualified small distiller*.
- Allow a qualified small distiller (or a substantially equivalent out-of-state entity) to sell and deliver spirits it manufactured to a retailer licensed to purchase and sell spirits if certain conditions are met. The conditions would include the spirits being sold and delivered only by an employee and not an agent, transported and delivered using a vehicle owned by the small distiller or entity, complying with applicable state and federal laws and departmental rules, and the spirits not being listed in the State of Michigan price book.
- For a qualified retailer issued SDM licenses at two or more locations, require the shipment of wine (the bill appears to include *wine* and the product now defined as *mixed spirit drink*) delivered by common carrier to a consumer to be fulfilled from the location nearest to the consumer unless the wine ordered is not in stock at that location.

Qualified retailer would mean an off-premises licensee that complies with all of the following:

- The physical licensed premises are open to the general public for face-to-face sales of alcohol, packaged food, and other products.
- At least 25% of the annual gross sales of alcohol are from face to face sales with consumers on the premises. (This would not apply to retailers whose physical licensed premises are less than 15,000 square feet).
- The retailer holds and maintains either a retail food establishment license or an extended retail food establishment license.

Qualified small distiller would mean a small distiller, or an out-of-state entity that is the substantial equivalent, that sells under 3,000 gallons of spirits per calendar year to retailers located in Michigan or out-of-state entities substantially equivalent to retailers. If the small distiller or entity manufactures spirits at more than one location, the total number of gallons of spirits sold to retailers or entities from all locations would have to be combined to determine the 3,000-gallon threshold.

MCL 436.1203

Senate Bill 1140 would amend a section of the code pertaining to the conditions under which brand-logoed merchandise may be provided to on- and off-premises licenses to eliminate references to “mixed spirit manufacturer” and “outstate seller of mixed spirit drink.”

MCL 436.1609

Tie-bars: SB 934 is tie-barred to SBs 1138 to 1140. SBs 1138 and 1140 are tie-barred to each other and to SB 1139. SB 1139 is tie-barred to SBs 934, 1138, and 1140. A bill cannot become law unless each bill to which it is tie-barred is also enacted into law.

FISCAL IMPACT:

The bills would have significant fiscal and revenue implications for the Department of Licensing and Regulatory Affairs (LARA) and various state funds. Notably, the bills would necessitate department expenditures and would change the tax structure currently in place for mixed spirit drinks. Senate Bill 1139 would change the tax rate from \$0.48 per liter (currently assessed on mixed spirit drinks) to \$0.20 per liter (once such beverages are included in the definition of "wine"). LARA indicated that revenue from the current tax rate was \$1,055,143 in FY 2018-19. Under the bill, tax revenue from beverages formerly classified as mixed spirit drinks would total approximately \$439,643; resulting in a \$615,500 reduction to general fund revenue. This calculation does not account for beverage sales that would be subject to the \$0.20 per liter tax that have an alcohol by volume (ABV) between 10% and 16%, which would mitigate the revenue decrease.

It should be noted that, at present, mixed spirit drinks must have a 10% or less ABV, but once classified as wine, these drinks could have an ABV of 16% or less. LARA estimates that this change, coupled with an altered distribution mechanism due to the reclassification of mixed spirit drinks, could result in a general fund revenue reduction of \$7.7 million, a School Aid Fund revenue reduction of \$1.2 million, and a \$1.2 million revenue reduction for the Convention Facility Development Fund.

The bill would have an indeterminate fiscal impact on licensure volumes and revenues. The bill would eliminate certain licenses associated with mixed spirit drink activities (including manufacturer and outstate seller licenses). However, the bill would create new licensure requirements for motor vehicles used for deliveries by qualified small distillers, small wine makers, and outstate self-distributors and would establish an outstate self-distributor license. The fee for a motor vehicle license under the bill would be \$50 per vehicle, and the initial fee for outstate self-distributors would be \$300. Fees from these revenues would be deposited to the Michigan Craft Beverage Council Fund within the Michigan Department of Agriculture and Rural Development. LARA also indicated that revenues from specially designated distributor (SDD) licenses would likely decline, due to the way that purchases of mixed spirit drinks are factored into license renewal fees. While an estimate of the potential impact is presently unavailable, any decline in revenue from this source would adversely affect the general fund and local units of government.

It is presently unclear whether additional appropriations would be required for LARA to implement the provisions of the bills, which include the reclassification of licenses associated with mixed spirit drink activities. It should be noted that the Liquor Control Commission is entirely financed with state restricted revenue.

POSITIONS:

The following entities indicated support for the bills (12-15-20):

- Great Lakes Wine and Spirits
- Michigan Beer and Wine Wholesalers Association

The Michigan Spirits Association indicated support for Senate Bills 1138, 1139, and 1140 and opposition to Senate Bill 934. (12-15-20)

The following entities indicated opposition to the bills (12-15-20):

- Michigan Liquor Control Commission
- Michigan Alcohol Policy

The Michigan Independent Retailers Association indicated opposition to Senate Bills 1139 and 1140. (12-15-20)

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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.