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Senate Bill 934 (as introduced 5-21-20)  
Sponsor: Senator Wayne Schmidt  
Committee: Regulatory Reform

Date Completed: 10-27-20

## **CONTENT**

**The bill would amend the Michigan Liquor Control Code to do the following:**

- **Allow a small distiller or out-of-State entity that was the substantial equivalent of the small distiller to sell and deliver spirits to a retailer if certain conditions were met.**
- **Allow a spirits shipper to sell alcoholic liquor at retail, where spirits could be sold and shipped directly to the consumer.**
- **Require a spirits shipper that sold, delivered, or imported spirits to a consumer to comply with certain requirements, including holding a license and paying any applicable taxes.**
- **Require an applicant for a spirits shipper license to submit an application and license fee to the Michigan Liquor Control Commission (MLCC).**
- **Require a person that delivered spirits for a spirits shipper to comply with existing age verification requirements.**

### Small Distiller

Under the Code, except as otherwise provided, a person may not sell, deliver, or import alcoholic liquor, including alcoholic liquor for personal use, in Michigan unless the sale, delivery, or importation is made by the MLCC, its authorized agent or distributor, an authorized distribution agent approved by MLCC order, a person licensed by the MLCC, or by prior written order of the MLCC.

The bill would allow a small distiller or out-of-State entity that was the substantial equivalent of a small distiller to sell and deliver spirits to a retailer if all of the following conditions were met:

- The small distiller or out-of-State entity sold and delivered not more than 1,500 nine-liter cases, or 13,500 liters in total, of spirits in a calendar year to retailers.
- The spirits were sold and delivered by an employee of the small distiller or out-of-State entity, not an agent, and were transported and delivered using a vehicle owned by the small distiller or out-of-State entity.
- The small distiller or out-of-State entity was in compliance with applicable State and Federal law and applicable regulatory provisions of the Code and rules adopted by the MLCC under the Code, including those requirements related to employees who sell and deliver spirits to retailers, vehicles used to deliver spirits to retailers, and uniform prices for the sale of alcoholic liquor established by the MLCC.

### Spirits Shipper

The Code allows certain classes of vendors to sell alcoholic liquor at retail. The bill would

include among this list spirits shippers, where spirits could be sold and shipped directly to the consumer. "Spirits shipper" would mean a person who sells, delivers, or imports spirits, to consumer in the State, that he or she produces and bottles, or spirits that are manufactured by a distiller for another distiller that are transacted or caused to be transacted through the use of any mail order, internet, telephone, computer, device, or other electronic means.

The bill would allow a spirits shipper to sell, deliver, or import spirits to consumers in Michigan by means of any mail order, internet, telephone, computer, device, or other electronic means. A spirits shipper that sold, delivered, or imported spirits to a consumer would have to comply with all of the following:

- Hold a spirits shipper license.
- Pay any applicable taxes to the MLCC and to the Department of Treasury and furnish an affidavit to verify payment, on request of the Department.
- Comply with all Michigan laws, including the prohibition on sales to minors.
- Verify the age of the individual placing the order by obtaining from him or her a copy of a photo identification issued by the State, another state, or the Federal government, or by using an identification verification services; the person receiving and accepting the order on behalf of the spirits shipper would have to record the name, address, date of birth, and telephone number of the individual placing the order on the order form or other verifiable record of a type and generated in a manner approved by the MLCC and provide a duplicate to the MLCC.
- On request of the MLCC, make available to it any document used to verify the age of the individual ordering or receiving the spirits from the spirits shipper.
- Stamp, print, or label on the outside of the shipping container that the package "Contains Alcohol. Must be delivered to a person 21 years of age or older."; the recipient would have to provide photo identification verifying his or her age and sign for the delivery.
- Place a label on the top panel of the shipping container containing the names and address of the individual placing the order and the name of the designated recipient if different from the name of the individual placing the order.

The spirits shipper would have to have received a registration number of approval from the MLCC for any spirits imported into the State. However, the registration number of approval would not have to be on the invoice or on the label of the spirits that the spirits shipper sold, delivered, or imported to a consumer in the State.

A spirits shipper that sold, delivered, or imported spirits to a consumer also would have to comply with all of the following:

- Authorize and allow the MLCC and the Department of Treasury to conduct an audit of the spirits shipper's records.
- Consent and submit to the jurisdiction of the MLCC, the Department of Treasury, and Michigan courts concerning enforcement of the bill and any related laws, rules, and regulations.
- Direct ship not more than 1,500 nine-liter cases, or 13,500 liters in total, of spirits in a calendar year to Michigan consumers.

If a spirits shipper, whether located in this State or outside the State, owned, in whole or in part, or commonly managed one or more spirits shippers, it could not in combination ship to Michigan consumers more than 13,500 liters of spirits in the aggregate.

A spirits shipper could not sell, deliver, or import spirits to a consumer unless it applied for and was granted a spirits shipper license from the MLCC. This provision would not prohibit spirits tasting or the selling at retail by a distiller of spirits he or she produced and bottled or

spirits manufactured for that distiller by another distiller, if done in compliance with the Code. Only the following people would qualify for issuance of a spirits shipper license:

- A small distiller.
- An out-of-State entity that was the substantial equivalent of a small distiller.

An applicant for a spirits shipper license would have to submit an application to the MLCC in a written or electronic format provided by the MLCC and accompanied by a \$100 initial license fee. The application would have to be accompanied by a copy or other evidence of the existing Federal basic permit or license, or both, held by the applicant. The spirits shipper could renew its license annually by submitting a \$100 license renewal fee and a completed renewal application. The MLCC would have to use the fees collected under this provision to conduct investigations and audits of spirits shippers. The failure to renew, or the revocation or suspension of, the applicant's existing Michigan license, Federal basic permit, or license to manufacture spirits in its state of domicile would be grounds for revocation or denial of the spirits shipper license. If a spirits shipper were found guilty of violating the Code or a rule promulgated by the MLCC, the Commission would have to notify both the alcoholic liquor control agency in the spirits shipper's state of domicile and the Alcohol and Tobacco Tax and Trade Bureau of the US Department of Treasury of the violation.

The Code allows a direct shipper to sell, deliver, or import wine to consumers in Michigan by means of any mail order, internet, telephone, computer, device, or other electronic means, or sell directly to a consumer on the winery premises. A direct shipper must comply with certain requirements prescribed in the Code.

A person who delivers wine for a direct shipper must verify that the individual accepting delivery is 21 years of age or older and is the individual who placed the order or the designated recipient, is an individual 21 years of age or older currently occupying or present at the address, or is an individual otherwise authorized through rule promulgated under the Code by the MLCC to receive alcoholic liquor. If the delivery person, after a diligent inquiry, determines that the purchaser or designated recipient is not 21 years of age or older the delivery person must return the wine to the direct shipper. A delivery person who returns wine to the direct shipper because the purchaser or designated recipient is not 21 years of age or older is not liable for any damages suffered by the purchase or direct shipper. The bill would refer to a person that delivers the wine for a direct shipper *or that delivers the spirits for a spirits shipper*.

MCL 436.1203 & 436.1537

Legislative Analyst: Stephen Jackson

### **FISCAL IMPACT**

The bill likely would have a negative fiscal impact on the Department of Licensing and Regulatory Affairs and no fiscal impact on local units of government. The \$100 license and renewal fees would result in increased revenue to the Michigan Liquor Control Commission. However, these fees likely would not be sufficient to cover the increased costs of investigation, auditing, and enforcement associated with the new licenses.

There currently are 143 active small distiller licenses in Michigan. It is unknown how many licensees would pursue a spirits shipper license.

Fiscal Analyst: Elizabeth Raczkowski

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.