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BILL ANALYSIS



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Senate Bills 1138 through 1140 (as introduced 9-22-20)

Sponsor: Senator Wayne A. Schmidt (S.B. 1138)
Senator Curtis S. VanderWall (S.B. 1139)
Senator Jeremy Moss (S.B. 1140)

Committee: Regulatory Reform

Date Completed: 9-22-20

CONTENT

Senate Bill 1139 would amend the Michigan Liquor Control Code to do the following:

- Revise the definition of "wine" to include mixed spirit drink.
- Delete a provision requiring the Michigan Liquor Control Commission (MLCC) to levy and collect on all mixed spirit drink sold in the State a tax at a rate of 48 cents per liter if sold in bulk or a like ratio if sold in smaller quantities.
- Delete a provision requiring the MLCC to issue a salesperson license to an individual who is a designated employee of a manufacturer of mixed spirit drink or an outstate seller of mixed spirit drink.
- Delete from various provisions and definitions references to "mixed spirit drink", "mixed spirit drink manufacturer", and "outstate seller of mixed spirit drink".
- Allow a supplier to take certain actions, including advertising the name and location of a retailer, to assist a consumer seeking to have an alcoholic beverage sold by the supplier delivered or direct shipped to the consumer's home or allowed designated location by a retailer, if certain conditions were met.

Senate Bill 1138 would amend the Michigan Liquor Control Code to do the following:

- Revise certain provisions pertaining to a retailer who holds a specially designated merchant (SDM) license to refer to a *qualified* retailer, and provide the definition of a "qualified retailer".
- Delete from various provisions references to "mixed spirit drink", "mixed spirit drink manufacturer", and "outstate seller of mixed spirit drink".
- Prohibit a wine maker or wine manufacturer that held a direct shipper license from holding a license in another state that was the substantial equivalent to a retailer license.
- Allow a qualified small distiller to sell and deliver spirits to a retailer licensed to purchase and sell spirits in the State, if certain conditions were met, and provide the definition of a "qualified small distiller".

Senate Bill 1140 would amend the Michigan Liquor Control Code to delete from various provisions and definitions references to "mixed spirit drink", "mixed spirit drink manufacturer", and "outstate seller of mixed spirit drink".

The bills are tie-barred to each other.

Senate Bill 1139

Definitions

The Code defines "wine" as the product made by the normal alcoholic fermentation of the juice of sound, ripe grapes, or any other fruit with the usual cellar treatment, and containing not more than 21% alcohol by volume, including cider made from apples or pears, or both, that contains at least one-half of 1.0% of alcohol by volume, or mead or honey wine made from honey, fermented fruit juices other than grapes, and mixed wine drink. Under the bill, the term also would include mixed spirit drink containing not more than 21% of alcohol by volume.

"Mixed spirit drink" means a drink manufactured and packaged or sold by a mixed spirit drink manufacturer or sold by an outstate seller of mixed spirit drink to a wholesaler that contains 10% or less alcohol by volume consisting of spirits mixed with nonalcoholic beverages or flavoring or coloring materials and that may also contain one or more of the following: water, fruit juices, fruit adjuncts, sugar, carbon dioxide, preservatives.

Instead, under the bill, "mixed spirit drink" would mean a wine manufactured and packaged or sold by an outstate seller of wine that contains 21% or less alcohol by volume consisting of spirits mixed with nonalcoholic beverages or flavoring or coloring materials and that may also contain one or more of the following: water, fruit juices, fruit adjuncts, sugar, carbon dioxide, preservatives.

The bill would delete the definitions of "mixed spirit drink manufacturer" and "outstate seller of mixed spirit drink".

"Outstate seller of wine" means a person licensed by the MLCC to sell wine that has not been manufactured in the State to a wholesaler in the State in accordance with rules promulgated by the MLCC and to sell sacramental wine. Under the bill, the term, instead, would mean a person licensed by the MLCC to sell wine or mixed spirit drink, or both that has not been manufactured in the State to a wholesaler in the State in accordance with rules promulgated by the MLCC and to sell sacramental wine. An outstate seller of wine would be subject to rules applicable to spirits manufacturing and labeling for mixed spirit drink that the outstate seller of wine manufactured.

The Code defines "brand" as any word, name, group of letters, symbol, trademark, or combination thereof adopted and used by a supplier to identify a specific beer, malt beverage, wine, mixed wine drink, or mixed spirit drink product and to distinguish that product from another beer, malt beverage, wine, mixed wine drink, or mixed spirit drink product that is produced or marketed by that or another supplier.

"Brand extension" means any brand that incorporates all or a substantial part of the unique features of a preexisting brand of the same supplier.

As used in the definitions of "brand" and "brand extension", "supplier" means a brewer, micro brewer, an outstate seller of beer, a wine maker, a small wine maker, an outstate seller of wine, a manufacturer of mixed wine drink, an outstate seller of a mixed wine drink, a mixed spirit drink manufacturer, or an outstate seller of mixed spirit drink.

The bill would delete from the definitions of "brand", "brand extension", and "supplier" references to mixed spirit drink, a mixed spirit drink manufacturer, and an outstate seller of mixed spirit drink.

"Class C license" means a place licensed to sell at retail beer, wine, mixed spirit drink, and spirits for consumption on the premises.

"Class G-1 license" means a place licensed to sell at retail beer, wine, mixed spirit drink, and spirits for consumption on the premises at a golf course having at least 18 holes that measure at least 5,000 yards and which license is issued only to a facility that permits member access by means of payments that include annual paid membership fees.

"Class B hotel" means a hotel licensed by the commission to sell beer, wine, mixed spirit drink, and spirits for consumption on the premises only, that provides for the rental of, and maintains the availability for rental of, at least 25 bedrooms if located in a local governmental unit with a population of less than 175,000 or at least 50 bedrooms if located in a local governmental unit with a population of 175,000 or more.

The bill would delete from the definitions of "class C license", "class G-1 license", and "class B hotel" references to mixed spirit drink.

"Specially designated distributor" mean a person engaged in an established business licensed by the MLCC to distribute spirits and mixed spirit drink in the original package for the MLCC for off-premises consumption. The bill would delete reference to mixed spirit drink.

"Specially designated merchant" means a person to whom the MLCC grants a license to sell beer or wine, or both, at retail for consumption off the licensed premises. Instead, under the bill, the term would mean a person to whom the MLCC grants a license to sell beer, wine, or mixed spirit drink, or any combination of beer, wine, or mixed spirit drink, at retail for off-premises consumption.

"Wine maker" means any person licensed by the MLCC to manufacture wine and to sell that wine to a wholesaler, to a consumer by direct shipment, at retail on the licensed winery premises, to a retail, and as provided in Section 537, which prescribes the classes of vendors that may sell alcoholic liquor at retail. The bill also would allow a wine maker to manufacture mixed spirit drink and sell mixed spirit drink to a wholesaler, at retail on the licensed winery premises, and as provided in Section 537.

Selling, Delivering, & Importing Alcoholic Liquor

The Code generally permits the transport of alcoholic liquor and sacramental wine, and grants the Michigan Liquor Control Commission (MLCC) the right, power, and duty to control alcoholic beverage traffic and traffic in other alcoholic liquor in Michigan.

Under Section 204, except for an individual who brings, transports, ships, or imports alcoholic liquor into Michigan under Section 203(8) or (9) (i.e., for personal use), for a retailer, or for imported sacramental wines, a person may not sell, deliver, or import beer, wine, or mixed spirit drink in Michigan unless the person is a supplier, a licensed direct shipper, or a wholesaler.

The person may sell, deliver, or import beer, wine, or mixed spirit drink only in one of the ways described in the Code.

The bill would delete all references to mixed spirit drink, outstate seller of mixed spirit drink, and mixed spirit drink manufacturer from Section 204.

Taxes

Section 301 of the Code requires the MLCC to levy and collect on all mixed spirit drink sold in the State a tax at a rate of 48 cents per liter if sold in bulk or a like ratio if sold in smaller quantities. If the mixed spirit drink is manufactured in the State the tax must be paid by the manufacturer of the mixed spirit drink or if the mixed spirit drink is manufactured outside the State the tax must be paid by the wholesaler assigned to distribute that mixed spirit drink. The bill would delete these provisions.

Under the Code, a wine maker or manufacturer of a mixed spirit drink may designate a wholesaler to pay the tax on behalf of the wine maker or manufacturer, respectively. If a wine maker or manufacturer designates a wholesaler to pay the tax on its behalf, that wine maker or manufacturer must notify the Commission of the designation and provide the Commission with a copy of its report of wine premises operations that it filed with the Alcohol and Tobacco Tax and Trade Bureau of the United States Department of Treasury for each calendar year. A wholesaler that is responsible for the payment of the tax or that is designated to pay the tax on behalf of the wine maker or manufacturer of the mixed spirit drink is required to pay only the tax on the number of liters actually sold by the wholesaler to licensed retailers. The bill would delete from these provisions the references to a manufacturer of a mixed spirit drink.

The Code also requires MLCC to establish by rule a method for the collection of the tax levied in Section 301 and reporting requirement for wholesalers, wine makers, outstate sellers of mixed spirit drink, and outstate sellers of wine to verify the remission of taxes to the State. The bill would delete the reference to an outstate sellers of mixed spirit drink.

Michigan Craft Beverage Council

Under the Code, subject to an appropriation, the Michigan Craft Beverage Council must direct the Department of Agriculture and Rural Development to award grants for certain projects, including projects that provide the brewing and distilling industries, including growers, brewers, distillers, distributors, and retailers, with information relative to proper methods of handling and selling hops, barley, beer, spirits, and mixed spirit drinks; projects that 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, that are used in the production of wine, cider, beer, spirits, and mixed spirit drinks; projects that provide for the promotion of the sale of Michigan agricultural products such as fruits, hops, and barley, that are 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; and projects that establish educational partnerships to benefit the beer, wine, cider, spirits, and mixed spirit drink industries.

The Code also requires the Council to invite the Chief Executive Officer of the Michigan Economic Development Corporation 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, that are used in the production of wine, cider, beer, spirits, and mixed spirit drinks.

Based on certain information provided to the Council, it may do either or both of the following:

- Take actions that will enhance the marketing and promotion of Michigan agricultural products, such as fruits, hops, and barley, that are used in the production of wine, cider, beer, spirits, and mixed spirit drink.

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

The bill would delete from the above provisions references to mixed spirit drink.

The Code defines "beer" as a beverage obtained by alcoholic fermentation of an infusion or decoration of barley, malt, hops, or other cereal in potable water. Instead, under the bill, the term would mean either of the following:

- A beverage obtained by alcoholic fermentation of an infusion or decoration of barley, malt, hops, sugar, or other cereal in potable water.
- Alcoholic liquor that is not brandy, mead, spirits, or wine.

Manufacturers & Outstate Sellers

Under Section 307 of the Code, a manufacturer of a mixed wine drink, mixed spirit drink manufacturer, outstate seller of a mixed wine drink, or outstate seller of mixed spirit drink must grant to each of its wholesalers an exclusive sales territory in which the wholesaler is a distributor of the specified brand or brands of the manufacturer or outstate seller. The territory is the territory agreed on between the wholesaler and the manufacturer of a mixed wine drink, mixed spirit drink manufacturer, outstate seller of mixed wine drinks, or outstate seller of mixed spirit drink.

Notwithstanding the above provision, a brand extension is not a new or different brand. A manufacturer of a mixed wine drink, mixed spirit drink manufacturer, outstate seller of a mixed wine drink, or outstate seller of mixed spirit drink must assign a brand extension to the wholesaler that was granted the exclusive sales territory for the brand from which the brand extension resulted.

The provision described above does not apply if, before January 1, 1994, a manufacturer of a mixed wine drink, mixed spirit drink manufacturer, outstate seller of a mixed wine drink, or outstate seller of mixed spirit drink had assigned a brand extension to a wholesaler that was not the appointed wholesaler for the brand from which the brand extension was made. The provision also does not apply if, before October 1, 2019, a successor manufacturer or successor outstate seller of mixed wine drink or mixed spirit drink had assigned a brand extension to a wholesaler that was not the appointed wholesaler for the brand from which the brand extension was made.

The bill would delete from the above provisions references to mixed spirit drink, mixed spirit drink manufacturer, and outstate seller of mixed spirit drink.

Salesperson License

The Code requires the MLCC to issue a salesperson license to an individual who is a designated employee of a manufacturer of mixed spirit drink or an outstate seller of mixed spirit drink.

The bill would delete this provision.

Motorsports Events

Under the Code, notwithstanding certain quota provisions, the MLCC may issue motorsports event licenses for the sale of beer and wine or beer, wine, mixed spirit drink, and spirits for consumption on the premises to the owner of a motorsports entertainment complex for use

during sanctioned motorsports events only. The sale of beer, wine, mixed spirit drink, and spirits at concession outlets or additional locations within the motorsports entertainment complex during motorsports sanctioned events may not be considered additional bars for the purpose of determining a license fee. An applicant for a motorsports event license that elects to sell beer and wine only must pay to the MLCC a \$250 license fee. An applicant for a license that elects to sell beer, wine, mixed spirit drink, and spirits must pay to the commission a \$600 license fee.

("Motorsports event" means a motorsports race and its ancillary activities that have been sanctioned by a sanctioning body. "Motorsports entertainment complex" means a closed-course motorsports facility and its ancillary grounds that comply with all of the following:

- Has at least 1,500 fixed seats for race patrons.
- Has at least seven scheduled days of motorsports events each calendar year.
- Serves food and beverages at the facility during sanctioned motorsports events each calendar year through concession outlets, which may be staffed by individuals who represent or are members of one or more nonprofit civic or charitable organizations that directly financially benefit from the concession outlets' sales.
- Engages in tourism promotion.)

The bill would delete from the above provisions references to mixed spirit drink.

License Fees

Except as otherwise provided, the Code requires certain license fees to be paid at the time of filing applications or as otherwise provided in the Code and are subject to allocation under Section 543, including the following:

- Outstate seller of mixed spirit drink, delivering or selling mixed spirit drink in the State, \$300.
- Mixed spirit drink manufacturer, \$100.

The Code also requires the following license fees to be paid at the time of filing application or as otherwise provided in the Code and are subject to allocation under Section 543:

- Specially designated distributors (SDDs) licensed by the MLCC to distribute spirits and mixed spirit drink in the original packaged for the MLCC for consumption off the original package for the Commission, plus certain additional fees.
- Hotels of class B selling beer, wine, mixed spirit drink, and spirits, a minimum fee of \$600 and \$3 for each bedroom in excess of 20.
- Class C license selling beer, wine, mixed spirit drink, and spirits, \$600.
- Clubs selling beer, wine, mixed spirit drink, and spirits, \$300 for clubs having 150 or fewer accredited members and \$1 for each member in excess of 150.

The bill would delete from the above provisions references to mixed spirit drink.

Club License

Under the Code, a club license allows the licensee to sell, for on-premises consumption, beer, wine, mixed spirit drink, and spirits only to bona fide members of the club who are at least 21 years of age. The bill would delete reference to mixed spirit drink.

Approved Tasting Room

Under the Code, an approved tasting room located on the manufacturing premises of one or more manufacturers that are owned by the same person and whose manufacturing premises share the same address must comply with certain requirements, including the following:

- A separate on-premises tasting room permit is not required for each license type of a person licensed by the MLCC under any combination of brewer, micro brewer, wine maker, small wine maker, distiller, small distiller, brandy manufacturer, or mixed spirit drink manufacturer licenses issued to that person at the same manufacturing premises.
- A brewer, micro brewer, wine maker, small wine maker, distiller, small distiller, brandy manufacturer, or mixed spirit drink manufacturer may own and operate a restaurant as part of the on-premises tasting room on the manufacturing premises.

If a brewer, micro brewer, wine maker, small wine maker, distiller, small distiller, brandy manufacturer, or mixed spirit manufacturer allows another person to operate a restaurant on the manufacturing premises, the brewer, micro brewer, wine maker, small wine maker, distiller, small distiller, brandy manufacturer, or mixed spirit drink manufacturer must hold a participation permit naming as a participant the other person.

An approved tasting room located off the manufacturing premises of one or more manufacturers, other than a brewer, micro brewer, or mixed spirit drink manufacturer that are owned by the same person and whose manufacturing premises share the same address must comply with certain specified requirements.

An approved jointly operated tasting room located off the manufacturing premises of two or more manufacturers, other than a brewer, micro brewer, or mixed spirit drink manufacturer, that are not owned by the same person and whose manufacturing premises do not share the same address must comply with certain specified requirements.

A wine maker, small wine maker, brewer, micro brewer, distiller, small distiller, brandy manufacturer, or mixed spirit drink manufacturer may add a nonalcoholic mixing ingredient or an alcoholic mixing ingredient manufactured by a wine maker, small wine maker, brewer, micro brewer, distiller, small distiller, brandy manufacturer, or mixed spirit drink manufacturer to sampled or purchased alcoholic liquor if the sample or purchased liquor is consumed on the premises of an approved tasting room.

The bill would delete from these provisions references to a mixed spirit drink manufacturer.

Under the Code, "tasting room" means certain locations, including a location on the manufacturing premises of a mixed spirit drink manufacturer where the mixed spirit drink manufacturer may provide samples of or sell at retail for on- or off-premises consumption, or both, mixed spirit drinks it manufactured. The bill would delete this location from the definition.

Distillers

Under the Code, a small distiller or distiller that also holds a mixed spirit drink manufacturer license may do all of the following:

- Sell mixed spirit drink it manufactured for consumption off the premises of an approved tasting room.
- Sell mixed spirit drink it manufactured for consumption on the premises of an approved tasting room.

- Sell or give away samples of any size of mixed spirit drink it manufactured for consumption on the premises of an approved tasting room.
- Sell or give away samples that do not exceed three ounces per sample of mixed spirit drink it manufactured for consumption on the premises of an approved tasting room.

The bill would delete these provisions.

Vendors, Sale of Alcoholic Liquor

Under Section 537 of the Code, various classes of vendors may sell alcoholic liquor at retail, including, among others, the following:

- Class C licensee, where beer, wine, mixed spirit drink, and spirits may be sold for consumption on the premises.
- Clubs, where beer, wine, mixed spirit drink, and spirits may be sold for consumption on the premises only to bona fide members if consumption is limited to these members and their bona fide guests, who are 21 years of age or older.
- Hotels of class A, where beer and wine may be sold for consumption on the premises and in the rooms of bona fide registered guests.
- Hotels of class B where beer, wine, mixed spirit drink, and spirits may be sold for consumption on the premises and in the rooms of bona fide registered guests.
- An SDD, where spirits and mixed spirit drink may be sold for consumption off the premises only.
- Special licensee, where beer and wine or beer, wine, mixed spirit drink, and spirits may be sold for consumption on the premises only.
- Class G-1 licensee, where beer, wine, mixed spirit drink, and spirits may be sold for consumption on the premises only to members required to pay an annual membership fee and consumption is limited to these members and their bona fide guests.
- Nonpublic continuing care retirement center license, where beer, wine, mixed spirit drink, mixed wine drink, and spirits may be sold at retail and served on the licensed premises to residents and bona fide guests accompanying the resident for consumption only on the licensed premises.

The bill would delete references to mixed spirit drink.

Under Section 537, the following classes of vendors, among others, may sell alcoholic liquor at retail:

- Direct shippers, where wine may be sold and shipped directly to the consumer.
- Wine maker or small wine maker, where wine manufactured by the wine maker or small wine maker may be sold by direct shipment as provided in Section 203, at retail for consumption on or off the premises in an approved tasting room under section 536, or as otherwise provided for in this act.
- Small wine maker, where wine bottled by the small wine maker may be sold by direct shipment as provided in Section 203, at retail for consumption on or off the premises in an approved tasting room under Section 536, or as otherwise provided for in this act.

The bill would refer to wine *other than mixed spirit drink*.

Section 537 also allows the following classes of vendors to sell alcoholic liquor at retail:

- Wine maker or small wine maker, where shiners may be sold by direct shipment as provided in Section 203, at retail for consumption on or off the premises in an approved tasting room under Section 536, or as otherwise provided for in this act.

- A mixed spirit drink manufacturer where mixed spirit drink manufactured by the mixed spirit drink manufacturer may be sold at retail for consumption on or off the premises in an approved tasting room under Section 536.

The bill would delete the provisions pertaining to a mixed spirit drink manufacturer. Additionally, shiners would not include shiners containing mixed spirit drink.

Nonpublic Continuing Care Retirement Center License

The Code requires the Commission, on submission of a completed application, to grant a nonpublic continuing care retirement center to an applicant that complies with the Code. The licensee may sell at retail and serve on the licensed premises beer, wine, mixed spirit drink, mixed wine drink, and spirits, for on-premises consumption by a resident or the bona fide guests accompanying the resident.

The bill would delete the reference to mixed spirit drink.

Inspection & Seizure of Alcoholic Drinks

Section 601 of the Code states the following:

Pursuant to section 2 of Amendment XXI of the Constitution of the United States, this state has an interest in ensuring the safety of beer, wine, mixed spirit drink, and mixed wine drink that is intended to be sold or is sold by wholesalers to retailers for purposes of human consumption. In order to protect the public health and safety, the commission must be able to inspect and seize beer, wine, mixed spirit drink, and mixed wine drink that is in the possession of a wholesaler being offered for sale in this state. The purpose of the inspection described in this subsection is to ensure that the beer, wine, mixed spirit drink, or mixed wine drink meets all of the following conditions:

- a) The beer, wine, mixed spirit drink, or mixed wine drink has been registered for sale with the commission.
- b) The beer, wine, mixed spirit drink, or mixed wine drink is not subject to a government mandated or supplier initiated recall.
- c) The beer, wine, mixed spirit drink, or mixed wine drink is not counterfeit.
- d) The beer, wine, mixed spirit drink, or mixed wine drink is labeled in conformance with applicable laws, rules, and regulations.
- e) The beer, wine, mixed spirit drink, or mixed wine drink can be tested by the commission or an agent assigned by the commission.
- f) The beer, wine, mixed spirit drink, or mixed wine drink is not prohibited by this state.

The Code authorizes the MLCC to seize or destroy beer, wine, mixed spirit drink, and mixed wine drink that did not meet the conditions described above.

To enable the MLCC to carry out the functions described in the Code and to randomly inspect records required to be maintained by a wholesaler under the Michigan Liquor Control Code and Michigan Administrative Code, a wholesaler or an applicant for a wholesaler license must have a warehouse located in Michigan and licensed by the MLCC for the storage, sale, and distribution of beer, wine, mixed spirit drink, and mixed wine drink before operating as a wholesaler in Michigan. This does not require a wholesaler to hold a warehouse license for the wholesaler's premises.

To ensure that all beer, wine, mixed spirit drink, and mixed wine drink sold in Michigan is subject to Section 601, the importation, sale, transportation, and delivery of all beer, wine, mixed spirit drink, and mixed wine drink offered for sale by a wholesaler must meet the requirements of Section 204 of the Code.

(Section 204 prohibits a person from selling, delivering, or importing beer, wine, or mixed spirit drink in Michigan unless the person meets certain requirements, among other things.)

The bill would delete references to mixed spirit drink.

Interest in Business of Another Vendor

Except as otherwise provided, Section 603 of the Code prohibits a supplier, warehouse, or wholesaler from having any direct or indirect financial interest in the establishment, maintenance, operation, or promotion of the business of any of the vendor. "Supplier" means a manufacturer, mixed spirit drink manufacturer, outstate seller of beer, outstate seller of wine, outstate seller of mixed spirit drink, and vendor of spirits or a person licensed by the MLCC to perform substantially similar functions but does not include a master distributor.

The bill would delete references to a mixed spirit drink manufacturer and an outstate seller of mixed spirit drink.

The Code also prohibits a manufacturer from having any direct or indirect interest in a wholesaler. "Manufacturer" means, notwithstanding Section 109(2), a wine maker, small wine maker, brewer, micro brewer, manufacturer of spirits, distiller, small distiller, brandy manufacturer, mixed spirit drink manufacturer, direct shipper, or a person licensed by the MLCC to perform substantially similar functions. (Under Section 109(2), "manufacturer" means a person that manufactures alcoholic liquor, whether located in or out of this state, including, but not limited to, a distiller, a small distiller, a rectifier, a mixed spirit drink manufacturer, a mixed wine drink manufacturer, a wine maker, a small wine maker, a brewer, and a micro brewer.)

The bill would delete references to a mixed spirit drink manufacturer.

Real Property

Section 605(5) of the Code allows a manufacturer, mixed spirit drink manufacturer, warehouser, wholesaler, authorized distribution agent, outstate seller of beer, outstate seller of wine, outstate seller of mixed spirit drink, or vendor of spirits to acquire, develop, sell, lease, finance, maintain, operate, or promote a condominium project or own a condominium unit as its sole property, under the Condominium Act, if that condominium unit is not the licensed premises owned separately by a retailer and if certain conditions apply, including that a retailer separately owning a separate condominium unit as sole property does not directly purchase alcoholic liquor from the manufacturer, warehouser, wholesaler, outstate seller of mixed spirit drink, or vendor of spirits who owns, leases, maintains, finances, or operates the condominium project.

Section 605(5) does not apply to a manufacturer, mixed spirit drink manufacturer, warehouser, wholesaler, authorized distribution agent, outstate seller of beer, outstate seller of wine, outstate seller of mixed spirit drink, or vendor of spirits with a direct or indirect interest in a license under the Michigan Gaming Control and Revenue Act. Section 605(5) does not prohibit a direct physical connection between a condominium unit that is the licensed premises and a condominium unit that is not the licensed premises.

The bill would delete references to a mixed spirit drink manufacturer and an outstate seller of mixed spirit drink.

SDM & SDD License Eligibility

Under the Code, a warehouse, mixed spirit drink manufacturer, wholesaler, outstate seller of beer, outstate seller of wine, outstate seller of mixed spirit drink, or vendor of spirits may not be licensed as an SDM or an SDD.

An SDD or SDM or any other retailer may not hold a mixed spirit drink manufacturer, wholesale, warehouse, outstate seller of beer, outstate seller of mixed spirit drink, or outstate seller of wine license.

A wholesaler may sell or deliver beer and alcoholic liquor to hospitals, military establishments, governments of Federal Indian reservations, and churches requiring sacramental wines and may sell to the wholesaler's own employees to a limit of two cases of 24 12-ounce units or its equivalent of malt beverage per week, or one case of 12 one-liter units or its equivalent of wine or mixed spirit drink per week.

The bill would delete references to a mixed spirit drink manufacturer, an outstate seller of mixed spirit drink, and mixed spirit drinks.

Distribution & Sale of Alcoholic Beverages

Section 608 of the Code states the following:

The purpose of Section 608 is to exercise this state's authority under section 2 of Amendment XXI of the Constitution of the United States to ensure an orderly market for the distribution and sale of alcoholic beverages.

It is the intent of this state to provide access to this state's alcoholic beverages by ensuring the independence of wholesalers to distribute the brands of beer, wine, mixed spirit drinks, and mixed wine drinks of multiple manufacturers free from the interference or control of any one manufacturer.

Among other things, a manufacturer may not intentionally ship beer, wine, mixed spirit drink, or mixed wine drink to a wholesaler that exceeds the order placed by the wholesaler or the forecast submitted by the wholesaler. "Manufacturer" includes a brewer, micro brewer, wine maker, small wine maker, mixed spirit drink manufacturer, outstate seller of beer, outstate seller of wine, or outstate seller of mixed spirit drink.

The bill would delete references to mixed spirit drinks, mixed spirit drink manufacturer, and outstate seller of mixed spirit drink.

Advertising

The Code allows a wholesaler, manufacturer, outstate seller of beer, outstate seller of wine, outstate seller of mixed spirit drink, vendor of spirits, broker, or retailer to use unpaid social media to advertise any of the following in accordance with all applicable laws and regulations:

- An on-premises brand promotion.
- Beer, wine, or spirits tastings.
- A product location communication.

"Social media" means a service, platform, or website where users communicate with one another and share media, such as pictures, videos, music, and blogs, with other users free of charge. The term includes the website of a wholesaler, manufacturer, outstate seller of beer, outstate seller of wine, outstate seller of mixed spirit drink, vendor of spirits, broker, or retailer.

The bill would delete references to an outstate seller of mixed spirit drink. Additionally, a supplier could take any of the following actions to assist a consumer seeking to have an alcoholic beverage sold by the supplier delivered or direct shipped to the consumer's home or allowed designated location by a retailer:

- Advertise the name and location of all retailers that delivered or direct shipped to a consumer the alcoholic beverages sold by the supplier.
- Provide a link to the website of each retailer that delivered or direct shipped to a consumer the alcoholic beverages sold by the supplier.
- Transmit the consumer's order and payment information to the retailers that the consumer chose to fulfill the customer's purchase and perform the delivery or direct shipment.

"Supplier" would mean that term as defined in Section 603. "Consumer" would mean that term as defined in Section 203 (an individual who purchases beer, wine, or spirits for personal consumption and not for resale).

A supplier could not take any action described above unless both of the following conditions were met:

- The supplier and retailer did not provide or receive any other valuable thing in consideration for any action described above taken by the supplier.
- The supplier provided the consumer a list of retailers, from which the consumer selected, that would deliver, sell, or direct ship the alcoholic beverage to the consumer.

The supplier could satisfy the above condition by providing the consumer with a list of retailers located in the zip code or nearest zip code to the consumer's location.

"Other valuable thing" would mean that term as defined in Section 609, which Senate Bill 1140 would amend.

Brand Promotion

The Code allows a manufacturer, mixed spirit drink manufacturer, warehouser, wholesaler, outstate seller of beer, outstate seller of mixed spirit drink, or vendor of spirits to provide to a retailer signs that promote the brands and prices of alcoholic liquor, including special event pricing.

A retailer may use an illuminated sign to promote the brand but not the price of alcoholic liquor. A manufacturer, mixed spirit drink manufacturer, warehouser, wholesaler, outstate seller of beer, outstate seller of wine, outstate seller of mixed spirit drink, or vendor of spirits may not provide to a retailer a sign described above. The allowed signs are in addition to the advertising items that a manufacturer, mixed spirit drink manufacturer, warehouser, wholesaler, outstate seller of beer, outstate seller of wine, outstate seller of mixed spirit drink, or vendor of spirits may provide another licensee.

The bill would delete references to a mixed spirit drink manufacturer and an outstate seller of mixed spirit.

Refund or Credit of Tax

A refund or credit of the tax on wine or mixed spirit drink and of the tax on beer must be made by the MLCC to a brewer, wine maker, outstate seller of beer, outstate seller of wine, outstate seller of mixed spirit drink, manufacturer of mixed spirit drink, wholesaler, or retail licensee who paid the tax if the wine, beer, or mixed spirit drink was sold to a military installation or Indian reservation in this state or if the wine, beer, or mixed spirit drink is lost, made unmarketable, or condemned by order of the MLCC as the result of a fire, flood, casualty, or other occurrence. A refund or credit may not be made as the result of theft.

A refund or credit of taxes must be made for damaged wine, beer, or mixed spirit drink only if all of the following circumstances exist:

- At the time of the fire, flood, casualty, or other occurrence, the wine, beer, or mixed spirit drink was being held for sale by the vendor claiming the refund or credit.
- The refund or credit of the amount claimed or any part of the amount claimed has not been and will not be claimed for the same wine, beer, or mixed spirit drink under any other law or rule.
- The vendor claiming the refund or credit is not indemnifiable by any valid claim of insurance or otherwise for the tax on the wine, beer, or mixed spirit drink covered by the claim.
- The amount claimed for a refund or credit is more than \$250 or the refund or credit is claimed for defective wine, beer, or mixed spirit drink for which the MLCC has authorized a manufacturer, outstate seller of beer, outstate seller of wine, outstate seller of mixed spirit drink, manufacturer of mixed spirit drink, or wholesaler to make an exchange, have replaced, or be reimbursed.
- The occurrence was not caused by an intentional act of the vendor claiming the refund or credit or an agent of that vendor.

A claim for a refund or credit of the tax must be made within three months after either of the following:

- The date upon which the damage occurred or was first discovered.
- The date of the sale to a military installation or Indian reservation in this state.

A claim for a refund or credit of the tax must be submitted to the MLCC on a form approved by the Commission. The claim must contain information specified in the Code as applicable.

The vendor claiming the refund or credit for damaged wine, beer, or mixed spirit drink must support a claim with any evidence, such as an inventory, statement, invoice, bill, record, or label, relating to the quantity of wine, beer, or mixed spirit drink on hand at the time of the fire, flood, casualty, or other disaster and alleged to have been lost, made unmarketable, or condemned as a result of the damage.

Before or after a tax refund or credit has been made for damaged wine, beer, or mixed spirit drink, the wine, beer, or mixed spirit drink upon which the refund or credit is based must be removed from the State or destroyed under the supervision of the MLCC.

In addition to the provisions described above, the tax paid on wine or mixed spirit drink must be rebated to the person who paid the tax upon the presentation of satisfactory proof to the MLCC that the wine or mixed spirit drink was shipped outside of the State for sale and consumption outside of Michigan.

The bill would delete all references to mixed spirit drink, an outstate seller of mixed spirit drink, and a manufacturer of mixed spirit drink.

Marihuana-Infused Alcohol

Under the Code, a person may not use or offer for use, possess, sell, or offer for sale marihuana-infused beer, wine, mixed wine drink, mixed spirit drink, or spirits. "Marihuana-infused beer, wine, mixed wine drink, mixed spirit drink, or spirits" means beer, wine, mixed wine drink, mixed spirit drink, or spirits that contain any amount of marihuana.

The bill would delete references to mixed spirit drink.

Tastings & Samplings

Except as otherwise provided, the Code prohibits a vendor from giving away any alcoholic liquor of any kind or description at any time in connection with his or her business, except a vendor that is a manufacturer for on-premises consumption. The Code also prohibits a person from conducting samplings or tasting of any alcoholic liquor for a commercial purpose except at premises that are licensed by the MLCC for the sale and on-premises consumption of alcoholic liquor.

The above provisions do not prevent a vendor of spirits, brewer, mixed spirit drink manufacturer, wine maker, small wine maker, outstate seller of beer, outstate seller of wine, or outstate seller of mixed spirit drink, or a bona fide market research organization retained by one of the persons named above, from conducting samplings or tastings of an alcoholic liquor product before it is approved for sale in the State, if the sampling or tasting is conducted pursuant to prior written approval of the MLCC.

The bill would delete references to a mixed spirit drink manufacturer and an outstate seller of mixed spirit drink.

On-Premises Consumption, Allowance

Under the Code, spirits and mixed spirit drink for on-premises consumption, in addition to beer and wine, may be sold by restaurants, hotels, and establishments approved by the MLCC in the following cities, villages, or townships if the legislative body of the city, village, or township by resolution of a majority vote of the members elect, votes in favor of allowing that sale. A petition may be filed with the city, village, or township clerk requesting the submission of the question of sale of spirits and mixed spirit drink for consumption on the premises, in addition to beer and wine.

The MLCC must continue to license class C licensees in a newly incorporated city or village until the question of the sale of spirits and mixed spirit drink for consumption on the premises, in addition to beer and wine, is submitted to the electors of the city or village as provided in this section. If a majority of the electors voting at an election vote in favor of the question submitted by ballot, spirits and mixed spirit drink may be sold in that city, village, or township for on-premises consumption, in addition to beer and wine.

If spirits and mixed spirit drink for on-premises consumption, in addition to beer and wine, may be sold by restaurants, hotels, and establishments approved by the MLCC in a city, village, or township and all or a part of that city, village, or township becomes annexed to and a part of a city or village that does not, at the time of annexation, permit those sales, the MLCC must continue to license class C licensees in that annexed area until the next regular, city, or village election, at which election, without the need to file a petition, the question of

the sale of spirits and mixed spirit drink for consumption on the premises, in addition to beer and wine, must be submitted to the electors of the city or village to which the territory has been annexed.

The bill would delete references to mixed spirit drink.

Hours of Sale of Alcohol

Section 1113 of the Code generally prescribes certain hours when a licensee may sell at retail, and a person may buy, spirits or mixed spirit drink. Section 1113 also allows the legislative body of a county to prohibit the sale of spirits and mixed spirit drink between certain hours.

The bill would delete all references to mixed spirit drink in Section 1113.

Under Section 1115, a licensee that elects to sell spirits or mixed spirit drink between the hours of 12 noon on Sunday and 2 AM on Monday under Section 113 may not do so until the licensee first obtains a permit and pays to the MLCC an additional fee in the amount of 15% of the fee charged for the issuance of the license. The revenue for the sale of spirits or mixed spirit drink during those hours must be deposited with the State Treasurer.

The bill would delete references to mixed spirit drink.

Senate Bill 1138

Use of Common Carrier

Section 203(1) of the Code specifies that, except as otherwise provided, a person may not sell, deliver, or import alcoholic liquor, including alcoholic liquor for personal use, in the State unless the sale, delivery, or importation is made by the MLCC, the Commission's authorized agent or distributor, an authorized distribution agent approved by order of the Commission, a person licensed by the Commission, or by prior written order of the Commission.

For the purposes of Section 203(1), a retailer that holds an SDM license located in the State may use a common carrier to deliver wine to a consumer in the State. A retailer that uses a common carrier to deliver wine to a consumer must comply with certain requirements, including the following:

- Paying any applicable taxes to the MLCC and paying any applicable taxes to the Department of Treasury as directed by the Department; and on the Department's request, a retailer must furnish an affidavit to verify payment.
- On the MLCC's request, making available to the Commission any document used to verify the age of the individual ordering or receiving the wine from the retailer.

For a delivery of wine through the use of a common carrier, a person taking the order on behalf of the retailer must comply with certain specified requirements.

The bill would amend these provisions to refer to a *qualified* retailer. "Qualified retailer" would mean a retailer licensed for off-premises sales that is open to the public and conducts face-to-face sales transactions of alcoholic liquor, packaged food, and other products to consumers. A location used as a distribution center would not be a qualified retailer. "Distribution center" would mean a location owned by a retailer, including an individually licensed retail location that is open to the public, that is used to store, sell, and fulfill online, phone, or electronic orders of any kind from consumers for alcoholic beverages for two or more commonly or separately owned licensed retail locations.

Direct Shipper

The Code prohibits a direct shipper from selling, delivering, or importing wine to a consumer unless it applies for and is granted a direct shipper license from the MLCC. This provision does not prohibit wine tasting or the selling at retail by a wine maker of wines he or she produced and bottled or wine manufactured for that wine maker by another wine maker, if done in compliance with the Code. The bill would refer to wine manufactured for that wine maker by another wine *manufacturer*.

The Code defines "direct shipper" as a person who sells, deliver, or imports wine to Michigan consumers, that he or she produces and bottles or wine that is manufactured by a wine maker for another wine maker that is transacted or caused to be transacted through the use of any mail order, internet, telephone, computer, device, or other electronic means, or sells directly to consumers on the winery premises.

Instead, under the bill, "direct shipper" would mean either of the following:

- A wine manufacturer that sells, deliver, or imports wine it has manufactured, bottled, and registered with the MLCC, to Michigan consumers that is transacted or caused to be transacted through the use of any mail order, internet, telephone, computer, device, or other electronic means, or sells directly to consumers on the winery premises.
- A wine manufacturer that purchases wine from another wine manufacturer and further manufactures or bottles the wine and registers it with the MLCC and sell it to Michigan consumers that is transacted or caused to be transacted through the use of any mail order, internet, telephone, computer, device, or other electronic means, or sells directly to consumers on the winery premises.

The Code specifies that only the following people qualify for the issuance of a direct shipper license:

- A wine maker.
- A wine producer and bottler located inside the country but outside of Michigan holding both a Federal basic permit issued by the Alcohol and Tobacco Tax and Trade Bureau of the US Department of Treasury and a license to manufacture wine in its state of domicile.

The bill would refer to a wine manufacturer instead of a wine producer and bottler. Additionally, the wine maker and wine manufacturer described above could not hold a license in another state that was the substantial equivalent to a retailer license.

The Code requires an applicant for a direct shipper license to submit an application to the MLCC in a written or electronic format provided by the Commission and accompanied by an application and initial license fee of \$100. The application must be accompanied by a copy of other evidence of the existing Federal basic permit or license, or both, held by the applicant. The bill would refer to *verified* evidence. Additionally, under the bill, this provision would apply to the initial application and any renewal application.

Under the bill, failure to renew, or the revocation of, the applicant's existing Michigan license, Federal basic permit, or license to manufacture wine in its state of domicile is grounds for revocation of a direct shipper license. The bill would refer to an initial application or renewal application for a direct shipper license. Additionally, acquiring a retail license in another state would be grounds for revocation or denial.

Third Party Facilitator

The Code allows a retailer that holds a SDM license located in the State to use a third party facilitator by means of the internet or mobile application to facilitate the sale of beer or wine to be delivered to the home or designated location of a consumer and a third party facilitator service may deliver beer or wine to a consumer on behalf of a retailer that holds an SDM license located in the State if all of the following conditions are met:

- If the third party facilitator service delivers spirits under this provision, it verifies that the individual accepting the delivery of the spirits is at least 21 years of age.
- A manufacturer, warehouse, wholesaler, outstate seller of beer, outstate seller of wine, supplier of spirits, or outstate seller of mixed spirit drinks does not have a direct or indirect interest in the third party facilitator service.
- A manufacturer, warehouse, wholesaler, outstate seller of beer, outstate seller of wine, supplier of spirits, or outstate seller of mixed spirit drinks does not aid or assist a third party facilitator service by gift, loan of money or property of any description, or other valuable thing, and a third party facilitator service does not accept the same.
- The retailer or consumer pays the fees associated with deliveries provided for under this provision.
- The third party facilitator service offers services for all brands available at the retail location.

The bill would refer to a *qualified* retailer. Additionally, the bill would delete references to an outstate seller of mixed spirit drink.

The Code also allows a retailer that holds an SDD license located in the State to use a third party facilitator by means of the internet or mobile application to facilitate the sale of beer or wine to be delivered to the home or designated location of a consumer and a third party facilitator service may deliver beer or wine to a consumer on behalf of a retailer that holds an SDM license located in the State if all of the following conditions are met:

- If the third party facilitator service delivers spirits under this provision, it verifies that the individual accepting the delivery of the spirits is at least 21 years of age.
- A manufacturer, warehouse, wholesaler, outstate seller of beer, outstate seller of wine, supplier of spirits, or outstate seller of mixed spirit drinks does not have a direct or indirect interest in the third party facilitator service.
- A manufacturer, warehouse, wholesaler, outstate seller of beer, outstate seller of wine, supplier of spirits, or outstate seller of mixed spirit drinks does not aid or assist a third party facilitator service by gift, loan of money or property of any description, or other valuable thing, and a third party facilitator service does not accept the same.
- The retailer or consumer pays the fees associated with deliveries provided for under this provision.
- The third party facilitator service offers services for all brands available at the retail location.

The bill would delete references to an outstate seller of mixed spirit drink.

Qualified Small Distiller

Under the bill, for purposes of Section 203(1), a qualified small distiller or an out-of-State entity that was the substantial equivalent of a qualified small distiller could sell and deliver spirits to a retailer licensed to purchase and sell spirits in the State if both of the following conditions were met:

- The spirits were sold and delivered by an employee of the qualified small distiller, not an agent, and were transported and delivered using a vehicle owned by the qualified small distiller.
- The qualified small distiller 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 sold and delivered spirits to retailers; vehicles used to deliver spirits to retailers; and State pricing and taxes.

"Qualified small distiller" would mean a small distiller, or another State substantial equivalent, that does not have spirits listed in the State of Michigan price book that sells under 3,000 gallons of spirits per calendar year to retailers whether located in the State or other states.

Senate Bill 1140

Definitions

The Code defines "barware retailer" as a person that offers brand logoed barware for sale to retailers, whether or not it is in their ordinary course of business, and that is not licensed as, or directly or indirectly affiliated with, a manufacturer of beer or wine, mixed spirit drink manufacturer, warehouser, wholesaler, outstate seller of beer, outstate seller of wine, or outstate seller of mixed spirit drink. For purposes of this subdivision, a licensing agreement that authorizes use of a brand logo is not a direct or indirect affiliation.

"Other valuable thing" means a good, service, or intangible good that is given, loaned, leased, or sold to another licensee that has value regardless of whether the value is nominal. The term includes a good, service, or intangible good that provided a benefit, regardless of how nominal, to the licensee other than advertising the brands and prices of alcoholic liquor produced by the manufacturer; sold by the outstate seller of beer, the outstate seller of wine, or the outstate seller of mixed spirit drink; or distributed by the wholesaler, except for consumable goods and those goods, services, or intangible goods approved by rule or order of the MLCC before January 1, 2014.

The bill would delete from these definitions references to a mixed spirit drink manufacturer and an outside seller of mixed spirit drink.

Advertising Items Regulations

Section 609 of the Code prohibits a manufacturer, mixed spirit drink manufacturer, warehouser, wholesaler, outstate seller of beer, wine, or mixed spirit drink, or vendor of spirits from aiding or assisting any other vendor by gift, loan of money or property, or other valuable thing. However, if manufacturers of spirits reduce the price of their products, the manufacturer of spirits may refund the amount of the price reductions to SDD licensees in a manner prescribed by the MLCC.

A manufacturer, mixed spirit drink manufacturer, warehouser, wholesaler, outstate seller of beer, outstate seller of wine, outstate seller of mixed spirit drink, or vendor of spirits may, in a manner consistent with rules, regulations, and orders made by the Commission, provide another licensee with an advertising item that promotes the brands and prices of alcoholic liquor produced by the manufacturer; sold by the outstate seller of beer, the outstate seller of wine, or the outstate seller of mixed spirit drink; or distributed by the wholesaler. Except as otherwise allowed, the advertising item may not have any use or value beyond the actual advertising of brands and prices of the alcoholic liquor.

Except for those orders that were approved for specific sponsorships or festivals, a manufacturer, mixed spirit drink manufacturer, warehouse, wholesaler, outstate seller of beer, outstate seller of wine, outstate seller of mixed spirit drink, or vendor of spirits may provide goods and services to another licensee that were approved by the MLCC under rules or orders adopted before January 1, 2014, and certain specified items.

The bill would delete from these provisions references to a mixed spirit drink manufacturer and an outstate seller of mixed spirit drink.

Brand Logoed Merchandise

The Code prohibits a retailer from using or possessing at its licensed premises advertising items that have a use or value beyond the actual advertising of brands and prices of alcoholic liquor except for the items listed in the Code. A retailer may possess and use brand logoed barware that advertises spirits if the items are purchased from a manufacturer of spirits, vendor of spirits, salesperson, broker, or barware retailer. A retailer also may possess and use brand logoed barware that advertises beer or wine if the items are purchased from a barware retailer.

In addition to the penalties provided under Section 903, a manufacturer of beer or wine, mixed spirit drink manufacturer, warehouse, wholesaler, outstate seller of beer, outstate seller of wine, or outstate seller of mixed spirit drink that provides or sells barware and is not authorized to provide or sell barware is subject to a maximum fine of \$2,500 as determined by the MLCC. Multiple violations resulting from the same incident may be treated as a single violation for purposes of issuance of any penalty imposed under the Code. The bill would delete references to a mixed spirit drink manufacturer and an outstate seller of mixed spirit drink.

MCL 436.1203 (S.B 1138)
436.1105 et al. (S.B. 1139)
436.1609 (S.B 1140)

Legislative Analyst: Stephen Jackson

FISCAL IMPACT

Senate Bill 1139

The bill likely would not have a significant fiscal impact on State government and would have no fiscal impact on local units of government. The removal of the 48-cents-per-liter tax on mixed spirits drinks would decrease revenue to the State by an unknown amount. The mixed spirits, instead, would be taxed at the level of wine with less than 16.0% alcohol content, at 13.5 cents per liter. The Michigan Liquor Control Commission collected \$832,246 from the 48-cent tax in fiscal year 2017-18. If the same amount of mixed drinks spirits instead had been subject to the 13.5 cent tax, the State would have collected \$233,058. The exact amount of lost revenue that could result from the removal of the 48-cent tax would depend upon the volume of spirits sold.

Senate Bills 1138 and 1140

The bills would have no fiscal impact on State or local government.

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.