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House Bill 4959 (Substitute H-1 as passed by the House)  
Sponsor: Representative Roger Hauck  
House Committee: Regulatory Reform  
Ways and Means  
Senate Committee: Regulatory Reform

Date Completed: 10-22-19

### **CONTENT**

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

- **Delete current wholesale licensing residency requirements.**
- **Allow the Michigan Liquor Control Commission (MLCC) to seize or destroy beer, wine, mixed spirit drink, and mixed wine drink that did not meet conditions listed in the bill.**
- **Require the importation, sale, transportation, and delivery of all beer, wine, mixed spirit drink, and mixed wine drink offered for sale by a wholesaler to meet the additional requirements found in the Michigan Liquor Control Code.**

#### Current Licensing Provisions

Currently, a wholesale licensee or an applicant for a wholesale license, if an individual, must be licensed only if that individual has resided in Michigan for at least one year immediately before the date of issuance of the license.

A wholesale licensee or an applicant for a wholesale license, if a partnership other than a limited partnership, must be licensed only if all of its members have resided in Michigan for not less than one year immediately before the date of issuance of the license.

A wholesale licensee or an applicant for a wholesale license, if a limited partnership, must be licensed only if the limited partnership is authorized to do business under the laws of the State, and if the general partner and all limited partners have resided in Michigan for not less than one year immediately preceding the date of issuance of the license. If the general partner is a corporation, the limited partnership must be licensed only if the corporation has been authorized to do business under Michigan laws for not less than one year immediately preceding the date on which the corporation obtained an interest in the limited partnership. A limited partnership that holds a wholesale license must not admit as a new limited partner an individual who has not resided in Michigan for at least one year immediately preceding the date on which the limited partnership interest was acquired by the individual.

A wholesale licensee or an applicant for a wholesale license, if a corporation, must be licensed only if the corporation is authorized to do business under Michigan laws and if all stockholders of the corporation have resided in Michigan for not less than one year immediately preceding the date of issuance of the license. A corporation that holds a wholesale license must not issue

shares of its stock to a person who has not resided in Michigan for at least one year immediately preceding the date on which the corporate stock was acquired by the person.

The bill would delete these provisions.

#### Inspection & Seizure of Alcoholic Drinks

The bill 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 bill would authorize 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 bill 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 would have to 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 would 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 was subject to the bill, the importation, sale, transportation, and delivery of all beer, wine, mixed spirit drink, and mixed wine drink offered for sale by a wholesaler would have to meet the requirements of Section 204 of the Michigan Liquor Control 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.)

MCL 436.1601

## **BACKGROUND**

In June 2019, the United States Supreme Court held that Tennessee's two-year residency requirement for liquor store owners violated the United States Constitution's Commerce Clause.<sup>1</sup> Specifically, Tennessee granted a retail liquor license only to those residents who had lived in the state for at least two years, and precluded the renewal of a license unless the applicant had resided in the state for 10 consecutive years. Both of these requirements were considered "demanding durational-residency requirements" by the Court. The Court held that, while Section 2 of the 21st Amendment of the U.S. Constitution ("The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited") provides states leeway in choosing their alcohol-related public health and safety measures, Tennessee's restrictions "blatantly favors the State's residents and has little relationship to public health and safety".

Legislative Analyst: Drew Krogulecki

## **FISCAL IMPACT**

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

Fiscal Analyst: Elizabeth Raczkowski

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<sup>1</sup> *Tennessee Wine and Spirits Retailers Assn v. Thomas*, 588 US \_\_\_\_\_ (2019).

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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.