

Legislative Analysis



MIXED SPIRIT DRINKS

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Senate Bill 141 (S-1) as reported from House committee
Sponsor: Sen. Wayne Schmidt

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

Senate Bill 142 (S-1) as reported
Sponsor: Sen. Winnie Brinks

Senate Bill 143 (S-1) as reported
Sponsor: Sen. Jeremy Moss

Senate Bill 144 (S-1) as reported
Sponsor: Sen. Curtis S. VanderWall

House Committee: Regulatory Reform
Senate Committee: Regulatory Reform
Complete to 5-5-21

(Enacted as Public Acts 16 to 19 of 2021)

BRIEF SUMMARY: Senate Bill 144 would amend the Michigan Liquor Control Code to lower the tax rate imposed on the volume of mixed spirit drink sold, revise certain license categories to include the sale of mixed spirit drink, allow a mixed spirit drink meeting certain conditions to contain a higher amount of alcohol by volume, require certain licensees to pay a charge per vehicle used for deliveries to retailers, and revise the definitions of several terms.

Senate Bill 141 would amend the code to allow delivery of mixed spirit drinks and spirits by certain licensees under certain conditions, allow a qualified distiller to sell and deliver its spirits to a retailer licensed to purchase and sell spirits under certain conditions, revise the definition of “direct shipper,” and define “qualified retailer” and “qualified small distiller.”

Senate Bill 142 would amend the code to allow mixed spirit drink manufacturers to sell and deliver mixed spirit drink to Michigan retailers if certain conditions are met and the sales to wholesalers and retailers are limited to 31,000 gallons per year.

Senate Bill 143 would replace references in the code to “retail licensee” and “licensee” with references to “retailer.”

FISCAL IMPACT: Senate Bills 141, 142, 143, and 144, examined jointly, would have significant fiscal implications for the Department of Licensing and Regulatory Affairs (LARA) and state revenues. (See **Fiscal Information**, below, for a detailed discussion.)

THE APPARENT PROBLEM:

At a time when sales of beer and wine are decreasing, interest is growing in distilled beverages and in mixed spirit drink in particular. However, certain regulations in the Michigan Liquor Control Code are lagging behind consumer interest and industry innovation. For instance, ready-to-drink cocktails are growing in popularity, but they are treated differently in the code than similar wine-based drinks. Mixed spirit drink is also left out of many provisions in the code, which creates unfairness and causes confusion as to where and when they can or cannot be sold or delivered and by which type of licensee. Legislation has been offered to update provisions of the liquor laws to incorporate the growing mixed spirit drink market.

THE CONTENT OF THE BILLS:

Senate Bill 144 would, among other things, do all of the following:

- Expand the definition of “mixed spirit drink” to include a product that meets both of the following conditions:
 - Contains more than 10% but not more than 13.5% alcohol by volume consisting of spirits mixed with nonalcoholic beverages and flavoring or coloring materials that may also contain water, fruit juices, fruit adjuncts, sugar, carbon dioxide, or preservatives.
 - Is filled in a metal container that meets all of the following conditions:
 - Has the general shape and design of a can that has a liquid capacity of not more than 24 ounces.
 - Has a closure that is an integral part of the container.
 - Cannot be readily closed after opening.
- Decrease the amount of a tax levied on mixed spirit drink sold in Michigan from a rate of 48 cents per liter to a rate of 30 cents per liter.
- Allow the following licensees to sell mixed spirit drink for consumption on or off the licensed premises, as applicable:
 - Class A.
 - Tavern.
 - Specially designated merchant (SDM), instead of a specially designated distributor (SDD) as is current law.
 - Motorsports event licensees (also allowed to sell spirits).
 - Class G-2 license (golf courses requiring annual memberships). The bill would add mixed spirit drink to the definition of “Class G-2 license” in section 107(3). [The bill does not include mixed spirit drink in section 537(m), which authorizes the types of alcoholic beverages that may be sold by vendor.]
- Amend several provisions that currently apply to wine to also apply to mixed spirit drink. For example, a supplier would be prohibited from coercing a wholesaler to accept delivery of mixed spirit drink if it was not ordered by that wholesaler or if an order was properly canceled.
- Allow a mixed spirit drink manufacturer to sell mixed spirit drink to a retailer as proposed by SB 142.
- Define ***outstate self-distributor*** as a person located in another state that is substantially equivalent to a micro brewer, small distiller, mixed spirit drink manufacturer, 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.
- Include a mixed spirit drink manufacturer or an outstate seller of mixed spirit drink in the definition of “supplier.”
- Amend the definition of “approved tasting room” to say that, with some exceptions, a licensee with an approved tasting room is not a retail licensee as that term is used in the act and its rules.
- Require payment of \$50 per vehicle used for delivery to a retailer by the following:
 - A small wine maker for delivery of wine.

- A mixed spirit drink manufacturer for delivery of mixed spirit drink.
- A qualified small distiller for delivery of spirits.
- Specify actions a supplier may take, if certain conditions are met, to assist a consumer to receive alcohol sold by the supplier delivered or shipped to the consumer's home or designated location. This would include such things as advertising the name and location of all retailers delivering or 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 ship the alcohol to the 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.
- Allow a wholesaler who is a master distributor to be authorized by an outstate seller of mixed spirit drink to register with the state the outstate seller's labels of mixed spirit drink and to collect and remit excise taxes levied by the state on mixed spirit drink.

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

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

A *pecially designated distributor* (SDD) license allows a retailer to sell spirits and mixed spirit drink to a consumer for consumption off the licensed premises.

(Under SB 144, an SDM licensee could also sell mixed spirit drink and an SDD licensee would be authorized to sell spirits only. Since most, if not all, SDD licensees hold both an SDD license and an SDM license, the primary significance of the change proposed by the bill is that an establishment that holds only an SDM license could sell mixed spirit drink in addition to beer and wine.)

MCL 436.1105 et seq.

Senate Bill 141 would amend section 203 of the code, which, among other things, regulates direct shippers of alcohol in the state. Generally speaking, a retailer (a licensee that sells to consumers in accordance with departmental rules, but is not a manufacturer or supplier) is prohibited from delivering alcohol to the home or business of a consumer or at any location away from the licensed premises. However, certain retailers may do so under conditions as provided in the code. The bill would classify some of these retailers as a *qualified retailers* (defined as below) and allow retailers and qualified retailers that hold an SDM license and are authorized to deliver beer and wine to the location of a consumer to also deliver mixed spirit drink. A licensed third-party facilitator would also be authorized to deliver mixed spirit drink.

The bill would also do the following:

- Expand the provision allowing a qualified 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 mixed spirit drink. In addition, a qualified retailer that holds an SDD license could 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, mixed spirit drink, and spirits.
- For a qualified retailer issued an SDM or SDD license at two or more locations, require the shipment of beer, wine, mixed spirit drink, or spirits delivered by common carrier to a consumer to be fulfilled from the location nearest to the consumer unless the beer, wine, mixed spirit drink, or spirits ordered are not in stock at that location.
- Revise the definition of “direct shipper” to mean either of the following:
 - A wine manufacturer that sells, delivers, or imports wine 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 from another wine manufacturer and further manufactures or bottles it or purchases shiners of wine from another wine manufacturer, registers it with the LCC, and sells it to consumers in the state through the means described above.
- 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, the spirits being transported and delivered using a vehicle owned by the small distiller or entity, compliance with applicable state and federal laws and departmental rules, and the spirits not listed in the state of Michigan price book.

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 directly 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 142 would add section 203b to the code to allow a mixed spirit drink manufacturer or an equivalent out-of-state entity to sell and deliver mixed spirit drink that it manufactures to a retailer in the state only if all of the following conditions are met:

- The retailer is not located in a sales territory for which the mixed spirit drink manufacturer or entity has granted exclusive sales rights to a wholesaler for the sale of any brand or brands of mixed spirit drink it produces.
- Sales and deliveries of the mixed spirit drink are made by the mixed spirit drink manufacturer's or entity's employee and transported and delivered using a vehicle owned by the mixed spirit drink manufacturer.
- The mixed spirit drink manufacturer or entity complies with applicable state and federal law and applicable regulatory provisions of the act regarding employees who sell and deliver mixed spirit drink, vehicles used to deliver the mixed spirit drink, price schedules and temporary price reductions, labeling and registration of mixed spirit drink, and payment of taxes, as well as requirements regarding returnable beverage containers under the bottle deposit law (1976 IL 1).
- Total annual sales do not exceed 31,000 gallons. The 31,000-gallon limit would include all brands and labels of the mixed spirit drink manufacturer or entity whether sold to a wholesaler or retailer in or outside the state. Sales to consumers on the licensed premises would not be included.

Proposed MCL 436.1203b

Senate Bill 143 would amend a section of the code pertaining to the conditions under which brand-logged merchandise may be provided to on- and off-premises licenses to replace references to "retail licensee" and "licensee" with "retailer."

MCL 436.1609

Tie-bars: Senate Bills 141 and 143 are tie-barred to each other and to SB 144. Senate Bills 142 and 144 are tie-barred to each other and to SBs 141 and 143. A bill cannot take effect unless each bill to which it is tie-barred is also enacted.

Effective dates: Each bill would take effect 90 days after being enacted.

HOUSE COMMITTEE ACTION:

The House Committee on Regulatory Reform reported the Senate-passed versions of the bills without amendment.

BACKGROUND INFORMATION:

The bills are reintroductions of Senate Bills 934, 1138, 1139, and 1140 of the 2019-20 legislation session. Those bills were passed by both chambers and enrolled but were pocket vetoed by the governor. (If the governor does not sign a bill within 14 days after getting it and the legislature has adjourned to end the legislative session, the bill does not become law and is said to have been "pocket vetoed.") Among the several ways in which the current legislation differs from the vetoed bills is that mixed spirit drink would not be included in the definition of "wine" under the current package of bills.

FISCAL INFORMATION:

Senate Bills 141, 142, 143, and 144, examined jointly, would have significant fiscal implications for LARA and state revenues. Notably, the bills would alter the tax structure currently in place for mixed spirit drinks.

Senate Bill 144 would create an outstate self-distributor license and would establish a \$300 annual fee for the license. The bill would also establish annual license fees of \$50 per vehicle for vehicles used by small wine makers, mixed spirit drink manufacturers, qualified small distillers, and outstate self-distributors for delivering products to retailers. The amount of revenue received from these fees would depend on the volume of licenses and is presently indeterminate. The revenue from these fees would be deposited in the Michigan Craft Beverage Council Fund and would be used by the Michigan Department of Agriculture and Rural Development and the Michigan Craft Beverage Council for purposes outlined in statute.

The Michigan Liquor Control Commission (MLCC), within LARA, may incur modest administrative costs for implementing these changes, though costs are not expected to be significant. However, it should be noted that the MLCC is entirely financed with state restricted revenue.

Senate Bill 144 would have a significant impact on the revenue that the state receives from the tax on mixed spirit drinks. LARA projects that reducing the mixed spirit drink tax rate from 48 cents to 30 cents per liter would result in an estimated \$400,000 loss in tax revenue based on FY 2018-19 tax collections, all other things remaining constant. This reduction would result in lower general fund revenue. The department indicated that total revenue from the current mixed spirit drink tax totaled \$1,055,143 in FY 2018-19.

However, the bill would also expand the definition of “mixed spirit drink,” as detailed in the summary, which would increase the amount of products and sales subject to the tax. LARA indicated that there will be an unknown amount of new tax revenue that will be collected from sales of canned cocktail products that will enter the Michigan market, though there is no sales data to project the tax revenue. This revenue, resulting from the definition change, may partially or completely offset the revenue lost from the tax rate reduction.

ARGUMENTS:

For:

Spirits in general, and mixed spirit drink in particular, are growing in popularity. This growth not only brings greater choice to consumers but also boosts the state’s economy through sales at bars and restaurants as well as retail outlets. However, the liquor code is out of date. The bills would create a level playing field for mixed spirit drink to compete with similar categories of alcoholic beverages and to be available at all retail locations. The bills will give new and small players, as well as established companies, access to all markets and also better access to consumers. Small distillers would be allowed to self-distribute their product while growing their business and would only be incorporated into the wholesaler franchise market once they have grown enough to make the jump successfully. Allowing a higher percentage of alcohol in mixed spirit drink will allow certain drinks Michiganders have enjoyed in other states to be available closer to home. Lower taxes on mixed spirits drink will help new entrepreneurs to

enter the market. As is often the case, regulations must be tweaked as consumer interest and demand change and as the regulated market changes. The bills would do just that.

Against:

Currently, manufacturers of mixed spirit drinks are not locked into the wholesaler “franchise” model whereby manufacturers cannot make a choice as to which wholesaler will market and distribute their product. However, under Senate Bill 144, mixed spirit drinks would be pulled into the state’s wholesaler franchise law. Some industry members see the bill as anti-competitive, as the bill’s language would lock manufacturers into working with a wholesaler who may not work hard to move their brand. If the brand doesn’t show immediate success, the wholesaler could in effect “abandon” the product, yet the franchise model would preclude the manufacturer from selecting a new wholesaler who would promote their brand. The concern is that adding mixed spirit drink to the franchise model could have a chilling effect on attracting some of the best brands from entering the state, which, according to committee testimony, could negatively impact the current competitive sales efforts that are driving the growth of this category of alcoholic beverages. For these reasons, some feel that Senate Bill 144 should be amended to retain the current flexibility of mixed spirit drink manufacturers to choose their own wholesalers.

Response:

Under the bills, mixed spirit drink will be able to be sold at more licensed retail markets, not just by specially designated distributors (package liquor stores) and certain on-premises licensees. The franchise component will actually allow smaller manufacturers to access these new markets. Without the bills, the concern is that larger companies could leverage the market and block entry into the market by new start-ups and small distillers.

POSITIONS:

Representatives of the following entities testified in support of the bills (4-13-21):

- Distilled Spirits Council of the United States
- Michigan Beer & Wine Wholesalers Association

The following entities indicated support for the bills:

- Michigan Licensed Beverage Association (4-20-21)
- Michigan Craft Distillers (4-13-21)
- Great Lakes Wine and Spirits (4-13-21)

The following entities indicated opposition to the bills:

- Michigan Spirits Association (4-13-21)
- Republic National Distributing Company (4-13-21)
- Midwest Independent Retailers Association (4-20-21)

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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.