

# Legislative Analysis



## ALCOHOL DISPENSING MACHINES

Phone: (517) 373-8080  
<http://www.house.mi.gov/hfa>

**House Bill 5304 (proposed substitute H-2)**  
**Sponsor: Rep. Rodney Wakeman**

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

**Senate Bill 656 (proposed substitute H-1)**  
**Sponsor: Sen. Jim Runestad**

**House Committee: Regulatory Reform**  
**Senate Committee (SB 656): Regulatory Reform**  
**Complete to 2-8-22**

## SUMMARY:

House Bill 5304 and Senate Bill 656, which are identical, would amend the Michigan Liquor Control Code to allow most retailers who hold an on-premises liquor license and certain manufacturers with a tasting room permit to have a machine that dispenses beer, wine, or mixed spirit drink to a customer on the licensed premises if certain conditions are met. The bills would codify provisions of rule R 436.1045 of the Michigan Administrative Code that now allow such machines in hotel rooms and at customer's tables under certain circumstances (see "Rule rescission," below). However, the bills would expand those provisions to allow mixed spirit drink to be dispensed at a customer's table (the rule now allows only beer or wine) and would add new provisions to allow for dispensing machines that are operated by secure key cards and are not located at a customer's table. An on-premises licensed establishment where one of these card-operated dispensing machines was located would be subject to an enhanced administrative penalty for certain violations of the code. The bills would rescind R 436.1045.

### Dispensing machines under the bills

The bills would add a new section to the Michigan Liquor Control Code to generally prohibit an *on-premises licensee* from allowing on the licensed premises a machine that dispenses alcohol directly to a customer and to establish exceptions providing that this prohibition does not apply to any of the following:

- A dispensing machine located in a bedroom or suite of a hotel of a class A or class B hotel licensee.
- A dispensing machine located at an on-premises licensed establishment if all of the following conditions are met:
  - The dispensing machine is located at a customer's table or booth.
  - The dispensing machine does not dispense more than 96 ounces of beer, wine, or mixed spirit drink in a single order.
  - The dispensing machine does not dispense spirits.
  - The customer orders the beer, wine, or mixed spirit drink from a clerk, servant, agent, or employee of the on-premises licensee.
  - The on-premises licensee does not sell, offer to sell, or advertise the sale of an unlimited quantity of beer, wine, or mixed spirit drink from the dispensing machine.

- The sale, service, and consumption of the dispensed alcohol are monitored by the on-premises licensee or the licensee's clerk, servant, agent, or employee to ensure compliance with the code and rules promulgated under it.
- A dispensing machine located at an on-premises licensed establishment if all of the following conditions are met:
  - The dispensing machine is not located at a customer's booth or table.
  - The customer activates the dispensing machine with a secure key card supplied by the on-premises licensee or the licensee's clerk, servant, agent, or employee. (An on-premises licensee, clerk, servant, agent, or employee who supplies a secure key card or reactivates it as described below would have to comply with section 801 of the code, which prohibits a retail licensee from selling, furnishing, or giving alcohol to a minor or to a visibly intoxicated individual.)
  - The secure key card is attached to the customer at all times through a necklace or bracelet or other means of securing it to the customer.
  - The dispensing machine does not dispense more than 16 ounces of beer, 12 ounces of wine, or 12 ounces of mixed spirit drink for each serving.
  - The dispensing machine does not dispense more than 32 ounces of any alcohol before the key card is reactivated by the licensee, clerk, servant, agent, or employee.
  - The dispensing machine does not dispense spirits.
  - The sale, service, and consumption of the dispensed alcohol are monitored by the licensee, clerk, servant, agent, or employee to ensure compliance with the code and departmental rules promulgated under it.

*On-premises licensee* would mean either of the following:

- A retailer that holds a license, other than a special license, to sell alcohol for consumption on the licensed premises.
- A manufacturer with an on-premises tasting room permit, off-premises tasting room permit, or joint off-premises tasting room license issued under section 536 of the code.

Under section 537 of the code, retailers that hold a license to sell alcohol for consumption on the licensed premises include, but are not limited to, the following:

- Taverns.
- Class C (e.g., restaurants).
- Clubs: sale only to bona fide members at least 21 years of age.
- Class A and class B hotels.
- Brewpubs.
- Class G-1 or G-2 (golf courses).
- Motorsports event licensees.
- Certain manufacturers (e.g., a small wine maker, brandy manufacturer, or mixed spirit manufacturer) in an approved tasting room.

#### **Enhanced administrative penalty**

Section 801(1) of the code prohibits a *retail licensee* from selling, furnishing, or giving alcohol to a minor or to a visibly intoxicated individual. Currently, the Michigan Liquor Control Commission, or any commissioner or authorized agent of the commission, may assess a penalty of up to \$1,000 for each violation of section 801(1), in addition to or instead of revoking or

suspending the licensee's license. The penalty is paid to the commission, deposited with the state treasurer, and credited to the general fund.

***Retail licensee*** means a person licensed to sell alcohol at retail for consumption on or off the licensed premises.

The bills would allow a penalty of up to \$2,000, instead of the current \$1,000 maximum penalty, to be assessed for each violation of section 801(1) by an on-premises licensee, or a clerk, servant, or employee of the licensee, if at the on-premises licensed establishment there is a dispensing machine that is not located at a customer's booth or table and is operated by secure key card, as described above. The enhanced penalty would apply regardless of whether the violation was associated with the dispensing machine. As now, the commission could suspend or revoke the on-premises licensee's license in addition to assessing the penalty.

### **Rule rescission**

R 436.1045 of the Michigan Administrative Code now generally prohibits a licensee from allowing on the licensed premises a vending machine that dispenses alcohol directly to a customer, whether or not operated by coin or currency, and establishes exceptions providing that this prohibition does not apply to either of the following:

- A dispensing machine, commonly known as an "in-room bar device," whether or not operated by coin or currency, that is located in the bedrooms or suites of licensed hotels.
- A dispensing machine that is located at an on-premises licensed establishment under all of the following conditions:
  - The dispensing machine is located at a patron's table or booth only.
  - The dispensing machine does not dispense more than 96 ounces of beer or wine in a single order.
  - The dispensing machine does not dispense spirits or mixed spirit drink.
  - The patron of the establishment ordered the beer or wine from the clerk, servant, agent, or employee of the licensee, who verified the patron's legal age and determined that the patron can otherwise be served an alcoholic beverage.
  - The licensee does not sell, offer to sell, or advertise the sale of an unlimited quantity of beer or wine from the dispensing machine.
  - The licensee monitors the sale, service, and consumption of beer or wine from the dispensing machine to ensure compliance with the code and rules promulgated under it.

R 436.1045 also prohibits a manufacturer, outstate seller of beer or wine, or wholesaler from selling, giving, or otherwise furnishing dispensing equipment, furniture, or fixtures to a retail licensee and a retail licensee from purchasing, receiving, or otherwise accepting the dispensing equipment from any of those licensees.

Further, R 436.1045 allows a manufacturer, wholesaler, or retail licensee who sells alcohol to a special licensee to provide draft beer-dispensing equipment or cooling equipment to the special licensee for use during the effective period of the special license.

The bills would rescind R 436.1045.

Proposed MCL 436.1552

**FISCAL IMPACT:**

House Bill 5304/Senate Bill 656 could lead to increased penalty revenue under the Michigan Liquor Control Code. Violations of section 801(1) would be subject to a \$2,000 penalty under the bills, whereas current law allows for a \$1,000 penalty. The amount of the revenue increase would depend on violation volumes, which are indeterminate.

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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.