

## QUALIFIED SMALL DISTILLERS

Phone: (517) 373-8080  
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**Senate Bill 579 (H-1) as reported from House committee**

**Sponsor: Sen. John Proos**

**House Committee: Agriculture**

**Senate Committee: Regulatory Reform**

**Complete to 12-18-18**

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

### SUMMARY:

Senate Bill 579 would amend the Michigan Liquor Control Code to gradually decrease the return of gross profits to the Liquor Control Commission (LCC) and establish regulations for qualified small distillers.

#### Gross profits

Currently, the LCC establishes uniform prices for the sale of alcoholic liquor *in state liquor stores and by specially designated distributors*. The bill would eliminate the wording “in state liquor stores and,” so that the prices would only be established for alcoholic liquor sold by specially designated distributors.

*Specially designated distributor* means a person engaged in an established business licensed by the LCC to distribute spirits and mixed spirit drink in the original package for consumption off the premises.

Except as otherwise provided in the Act, the current prices are required to return a gross profit of not less than 51% and not greater than 65% to the LCC. The bill would decrease the maximum percentage of gross profit to the LCC as follows:

- For 2018, not greater than 65%.
- For 2019, not greater than 64.5%.
- For 2020, not greater than 64.5%, unless the 2019 total sales of spirits in this state increased by at least 2% from the 2018 sales. If the 2019 total sales of spirits in this state increased as described above, beginning with the second quarterly price for 2020, then the LCC would have to establish uniform prices that will return a profit of 64%.
- For 2021, not greater than the percentage established by the LCC for 2020 unless the 2020 sales of spirits in this state increased by at least 2% from the 2019 sales. If the 2020 sales of spirits in this state increased as described above, beginning with the second quarterly price for 2021, then the LCC would have to establish uniform prices that would reduce the percentage of gross profit by 0.5 percentage point from the previous year.
- For 2022, not greater than the percentage established by the LCC for 2021 unless the 2021 sales of spirits in this state increased by at least 2% from the 2020 sales. If the 2020 sales of spirits in this state increased as described above, beginning with the second quarterly price for 2022, then the LCC would have to establish uniform prices that would reduce the percentage of gross profit by 0.5 percentage point from the previous year.
- For 2023 and each year afterward, the percentage established for 2022.

Additionally, a 17% discount can currently be deducted from the sale price established by the LCC on the sale of alcoholic liquor made by the state liquor stores to specially designated distributors and establishments licensed to sell for consumption on the premises.

The bill would replace the provision to allow specially designated distributors and on-premises licensees a 17% discount from the uniform price described above.

### **Qualified small distiller**

The bill would add that no later than February 1, 2019, and each February 1 afterward, a small distiller or an out-of-state entity that is the substantial equivalent of a small distiller may file an application with the Department of Agriculture and Rural Development (MDARD) to be certified as a *qualified small distiller*. MDARD would have to certify that an applicant is a qualified small distiller or out-of-state entity, which would mean, as determined by MDARD, that the base distillate of the small distiller or out-of-state entity is at least 40% distilled from the distilled grain grown and harvested in Michigan. The certificate would expire after one year on February 1. MDARD also would be able to charge a reasonable certification fee.

Additionally, no later than October 1, 2019, and each October 1 afterward, MDARD would have to submit a report to the LCC, which includes the name of each qualified small distiller as certified above.

The bill also would add that, beginning January 1, 2020, for each bottle of spirits produced by a qualified small distiller of which at least 40% of the base distillate is distilled from grain grown and harvested in Michigan as determined by MDARD), the price for each bottle would have to return a gross profit to the LCC of 32.5%.

A small distiller or out-of-state entity that supplied false information to MDARD or the LCC would be guilty of a misdemeanor punishable by imprisonment for up to one year or a fine of up to \$3,000, or both. Additionally, the small distiller or out-of-state entity would have to pay the LCC the difference between the gross profit the LCC would have received if the small distiller or out-of-state entity were not a qualified small distiller, as determined by the LCC.

The bill also would add that a qualified small distiller would have to keep a complete and accurate set of records and accounts of all transactions pertaining to the operation of its distillery, including at least the following:

- Records and accounts of all distilled grain received in or withdrawn from the distillery.
- All acknowledgment forms and Michigan certification of origination statements in the qualified distiller's possession. (Acknowledgment forms would include scale weight tickets, load slips, or other evidence identifying the distilled grain being transferred to possession of the small distiller. A Michigan certification of origination statement would be a signed statement by the deliver or producer of grain on an acknowledgment form that the grain was grown and harvested in Michigan.)
- Copies of all contracts.
- Acknowledgment forms returned to and settled by the qualified distiller.

MDARD and the LCC would be able to examine the above records and accounts pertaining to the qualified distiller's distilled grain handling business at any time during normal business hours.

MCL 436.1233

## **HOUSE COMMITTEE ACTION:**

The House Committee on Agriculture reported an H-1 substitute for the bill. The substitute included sugar beets and honey in the definition of distilled grain and added “an out-of-state entity that is the substantial equivalent of a small distiller” to the provisions of the bill, as described above. The substitute also added language stipulating that only each bottle produced by a qualified small distiller of which at least 40% of the base distillate is distilled from grain grown and harvested in Michigan would be eligible for the 32.5% reduced LCC gross profit.

## **FISCAL IMPACT:**

Senate Bill 579 would reduce the gross profit on uniform liquor prices in accordance with the schedule shown above, beginning in calendar year 2019. The lower liquor price would also lead to a decrease in liquor tax collections. Decreases in the price of the liquor would result in lower revenues to the Liquor Purchase Revolving Fund (whose balance lapses to the General Fund). Decreases in revenues collected from liquor taxes would adversely impact the School Aid Fund, the General Fund, and the Convention Facility Development Fund. The exact magnitude of these reductions is indeterminate, but could be significant. The impact of lowering the gross profit for spirits produced by qualified small distillers under the bill would also reduce revenues to the aforementioned funds. The impact of that reduction would depend on how many entities would be considered qualified small distillers, and is therefore unknown.

The bill would establish a process for small distillers to apply and become certified as qualified small distillers. The bill gives MDARD administrative authority over the certification program, including the authority to audit the small distiller’s records to determine if the distiller met the qualified small distiller certification requirements.

The bill would increase responsibilities for MDARD and related program costs. Department representatives indicate that the bill’s application processing, certification, and auditing requirements would require one full-time-equated position. Estimated salary and other program costs would total approximately \$150,000. The bill authorizes MDARD to charge a reasonable certification fee. The amount of fee revenue, and whether fee revenue would be sufficient to offset program costs, would depend on the amount of the fee and the number of applicants.

The bill provides that a small distiller that supplied false information to MDARD or the LCC under would be guilty of a misdemeanor punishable by imprisonment for not more than one year or a fine of not more than \$3,000, or both. New misdemeanor convictions would increase costs related to county jails and/or local misdemeanor probation supervision. The costs of local incarceration in a county jail and local misdemeanor probation supervision vary by jurisdiction. Any increase in penal fine revenues would increase funding for local libraries, which are the constitutionally designated recipients of those revenues. The fiscal impact on the judiciary and local court funding units would depend on how the provisions of the bill affected court caseloads and related administrative costs.

The bill would also require a small distiller that supplied false information to pay the LCC the difference between the gross profit the LCC would have received if the small distiller were not a qualified small distiller, as determined by the LCC.

## POSITIONS:

Representatives of the following entities testified in support of the bill (12-12-18):

- Michigan Craft Distiller's Association
- Emergent Malt

The following entities indicated support for the bill (12-12-18):

- Michigan Licensed Beverage Association
- Michigan Sugar Company
- Michigan Farm Bureau
- Uncle John's Cider Mill
- Michigan Manufacturers Association
- Potato Growers of Michigan

A representative of the Michigan Spirits Association indicated a neutral position on the bill. (12-12-18)

Representatives of the following entities testified in opposition to the bill (12-12-18):

- Michigan Liquor Control Commission
- Michigan Department of Agriculture and Rural Development
- Traverse City Whiskey Company

The following entities indicated opposition to the bill (12-12-18):

- Michigan Department of Licensing and Regulatory Affairs
- State Budget Office

Legislative Analyst: Emily S. Smith  
Fiscal Analysts: Marcus Coffin  
William E. Hamilton  
Robin Risko

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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.