

## LIQUOR CODE REVISIONS

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

**Senate Bills 1154 through 1158 as reported from committee**  
**Sponsor: Sen. Tory Rocca**

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

**Senate Bills 1159 through 1163 as reported from committee**  
**Sponsor: Sen. Joe Hune**

**Senate Bills 1164 through 1168 as reported from committee**  
**Sponsor: Sen. Rebekah Warren**

**House Committee: Regulatory Reform**  
**Senate Committee: Regulatory Reform**

**Complete to 12-11-18** *(Enacted as Public Acts 403 through 417 of 2018)*

## SUMMARY:

Taken together, the bills would allow brewers and microbrewers to have on-premises tasting rooms, expand the scope of tasting rooms, expand the definition of manufacturer to include a portion of the manufacturing process, allow manufacturers to sell their products in tasting rooms, provide greater ability to transfer products between manufacturers, and add or revise definitions in the Michigan Liquor Control Code.

All of the bills amend the Michigan Liquor Control Code. A brief description highlighting significant changes within each bill follows.

### **Senate Bills 1157, 1158, and 1160**

Senate Bill 1160 would revise several definitions and add two new ones. (Italicized text denotes changes proposed by the bill.) “Manufacturer” would be revised to mean a person that manufactures alcohol liquor, *whether located in or out of the state*, and would include, but not be 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 also revise the definition of “mixed spirit drink” to include a drink packaged or sold by *an outstate seller of mixed spirit drink to a wholesaler* in place of the phrase “an outstate seller of mixed spirit drink.” “Mixed spirit drink manufacturer” would be revised to clarify that the term means a person licensed under the Code to manufacture mixed spirit drink and to sell it *at retail in accordance with Section 537* (amended by Senate Bill 1164).

The term “manufacture” would be defined to mean to distill, rectify, ferment, brew, make, produce, filter, mix, concoct, process, or blend an alcoholic liquor or to complete a portion of one or more of those activities. The term would not include bottling or mixing or other

preparation of drinks for serving by those persons authorized by the Code to serve alcoholic liquor for consumption on the licensed premises. The term also would not include attaching a label to a shiner. All containers or packages of alcoholic liquor would have to state clearly the name, city, and state of the bottler.

“Manufacturing premises” would mean the licensed premises of a manufacturer where the manufacturer manufactures alcoholic liquor or, for a small wine maker only, bottles wine.

MCL 436.1109

Senate Bills 1157 and 1158 would amend citations in their respective provisions to reflect changes in subsection numbering that would result from amendments proposed by Senate Bill 1160.

### **Senate Bills 1162, 1163, and 1166**

Senate Bill 1166 would add new definitions and revise others.

“Restaurant” would be defined as a food service establishment defined and licensed under the Food Law. A restaurant that does not hold a license issued by the Commission under the Code would be prohibited from manufacturing, marketing, delivering, or selling alcohol in this state.

“Shiner” would mean an unlabeled, sealed, container of wine, including a keg, sold by a wine maker, small wine maker, or out-of-state entity that is the substantial equivalent of a wine maker or small wine maker to another wine maker, small wine maker, or out-of-state entity that is the substantial equivalent of a wine maker or small wine maker. The purchasing wine maker or small wine maker would have to attach a label to the container using equipment owned or leased by the purchasing wine maker or small wine maker, register the wine label with the Commission, and sell it as provided for in the Code.

“Small wine maker” would be revised to specify that a small wine maker would not be required to bottle wine it manufactures.

MCL 436.1111

Senate Bills 1162 and 1163 would amend citations in their respective provisions to reflect changes in subsection numbering that would result from amendments proposed by Senate Bill 1166.

### **Senate Bill 1155**

Senate Bill 1155 would add a new section to prohibit a manufacturer from selling or transferring alcohol to a licensed manufacturer in the state except as provided in the bill. Specifically, a manufacturer could sell or transfer wine or spirits to a licensed

manufacturer, and a licensed manufacturer could purchase or receive wine or spirits under any of the following conditions:

- For a sale or transfer of wine:
  - The selling or transferring manufacturer is a wine maker, a small wine maker, or an out-of-state entity substantially similar and is selling or transferring the wine to another wine maker, small wine maker, or out-of-state equivalent entity.
  - The purchasing or receiving manufacturer manufactures or bottles wine at its licensed premises.
- For a sale or transfer of spirits:
  - The selling or transferring manufacturer is a distiller, small distiller, or out-of-state equivalent entity and is selling or transferring the spirits to one of the above entities.
  - The purchasing or receiving distiller or small distiller manufactures spirits at its licensed premises.

However, product purchased or received under the above could not be sold unless one of the following conditions were met:

- The purchasing or receiving manufacturer modifies the purchased or received alcohol by performing a portion of the manufacturing process as described in Section 109(1) of the Code (added by Senate Bill 1160).
- The purchasing or receiving small wine maker bottles the purchased or received wine.
- The purchasing or receiving wine maker or small wine maker is selling a shiner on which the wine maker or small wine maker has placed a label under Section 111(10).

The new section would not prevent a manufacturer from selling, purchasing, or receiving nonalcoholic ingredients to or from another manufacturer.

Proposed MCL 436.1204a

### **Senate Bills 1159 and 1168**

Senate Bill 1159 would add a new section to do, among other things, the following:

- Allow a person to be licensed as more than one type of manufacturer, but require compliance with provisions of the Code for each type of license held.
- Allow, subject to provisions in the bill and Senate Bill 537 (as amended by Senate Bill 1164) a manufacturer to operate one or more tasting rooms (brewers and microbrewers would be limited to the number of tasting rooms allowed under Section 411 as revised by SB 1154). A manufacturer would not be a retailer merely because of having a tasting room.
- Allow a manufacturer to sell alcoholic liquor that it manufactured for consumption off the premises in an approved tasting room as specified in the bill.
- Allow a tasting room to be jointly operated by two or more manufacturers if certain conditions were met.
- Specify that a tasting room is to be treated as a licensed premises.

- Establish criteria that must be met for:
  - A tasting room located on the manufacturing premises of one or more manufacturers owned by the same person and whose premises share the same address.
  - A tasting room located off the manufacturing premises of one or more manufacturers (other than a brewer, micro brewer, or mixed spirit drink manufacturer) owned by the same person and whose manufacturing premises share the same address.
  - A 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.
- Among the criteria for the tasting rooms described above, require local approval by the governing body in which the tasting room or rooms will be located (this does not apply to a city with a population of 600,000 or more or for a tasting room in existence before the bill’s effective date); issuance of an on-premises tasting room permit or off-premises tasting room license; payment of permit or license fee; and compliance with server training requirements.
- For a wine maker, small wine maker, distiller, small distiller, or brandy manufacturer, allow no more than five off-premises tasting room licenses, joint off-premises tasting room licenses, or combination of off-premises and joint off-premises at which alcoholic liquor manufactured by the tasting room licensee(s) could be sold by the glass for consumption on the licensed premises, or samples sold or given away for consumption on the licensed premises. (For tasting room licenses issued before October 1, 2018, no more than the equivalent number of off-premises tasting room licenses, joint off-premises licenses, or combination of off-premises and joint off-premises tasting room licenses would be allowed.)
- Specify the size of samples that may be sold or given away for consumption on the premises of a tasting room.

Proposed MCL 436.1536

Senate Bill 1168 would amend a citation to conform to a change in subsection numbering that would result from amendments proposed by Senate Bills 1159 and 1164.

### **Senate Bills 1156 and 1167**

Senate Bills 1156 and 1167 would amend Sections 113 and 113a of the Code, respectively, to define “tasting room” to mean any of the following:

- A location on the manufacturing premises of a brewer or micro brewer where it may produce samples of or sell at retail for on- or off-premises consumption, or both, beer it manufactures.
- A location on or off the manufacturing premises of a wine maker or small wine maker where it may provide samples of or sell at retail for on- or off-premises consumption, or both, shiners, wine it manufactured, or, for a small wine maker only, wine it bottled.

- A location on or off the manufacturing premises of a distiller or small distiller where it may provide samples of or sell at retail for on- or off-premises consumption, or both, spirits it manufactures.
- A location on the manufacturing premises of a mixed spirit drink manufacturer where it may produce samples of or sell at retail for on- or off-premises consumption, or both, mixed spirit drinks it manufactures.
- A location on the manufacturing premises of a brandy manufacturer where it may produce samples of or sell at retail for on- or off-premises consumption, or both, brandy it manufactures.

Each bill would also revise the definition of “wine” to include cider made from apples or pears, or both, which contains at least one-half of 1% alcohol by volume, or mead or honey wine made from honey.

MCL 436.1113 and 436.1113a, respectively<sup>1</sup>

### **Senate Bill 1154**

Senate Bill 1154 would allow a brewer or micro brewer to sell beer it manufactured for consumption on or off the premises at an approved tasting room under provisions proposed by Senate Bill 1159 if the tasting room were located on licensed brewery premises where the brewer or micro brewer manufactures. Subject to existing limitations, if a brewer or micro brewer had more than one licensed brewery premises, the bill would allow the brewer or micro brewer to sell beer that it has produced at one licensed brewery premises at an approved tasting room on any of its other licensed brewery premises if conditions specified in the bill were met, such as that the licensed brewery premises receiving the beer, on which the tasting room is located, must produce a volume of beer equivalent to 50% of the volume of beer sold to consumers at that tasting room.

MCL 436.1411

### **Senate Bill 1161**

Senate Bill 1161 would allow a distiller to have an approved tasting room and sell at retail in accordance with Sections 536 (added by Senate Bill 1159) and 537 (amended by Senate Bill 1164). The bill would also delete a provision currently restricting sales to be made from its licensed premises.

MCL 436.1534

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<sup>1</sup> Note: Public Act 269 of 2005, which amended Section 113 and added Section 113a, specifies that if a court holds any provision of Section 113 to be unconstitutional, Section 113 is repealed. Section 113a does not take effect unless Section 113 is held to be unconstitutional or is repealed.

## Senate Bill 1164

Senate Bill 1164 would amend Section 537, which lists the classes of vendors authorized to sell alcohol at retail, such as taverns and package liquor stores. The bill would revise the authorization for “micro brewers and brewers” to specify that beer manufactured (rather than produced) by the micro brewer or brewer could be sold in an approved tasting room under provisions added by Senate Bill 1159 to a consumer for consumption on or off the manufacturing (rather than brewery) premises.

The authorization for a “wine maker” would be revised to include a small wine maker and would allow those vendors to sell wine manufactured by the wine maker or small wine maker by direct shipment as provided in Section 203, at retail for consumption on or off the premises in an approved tasting room, or as otherwise provided in the Code.

The bill would add that a small wine maker could sell wine it bottled by direct shipment as provided in Section 203, at retail for consumption on or off the premises in an approved tasting room, or as otherwise provided in the Code. Further, a wine maker or small wine maker would also be authorized to sell shiners in the same manner.

The authorization for a “small distiller” would be expanded to include a distiller, would no longer refer to those selling less than 60,000 gallons of spirits, and would authorize sales to the consumer at retail for consumption on or off the premises in an approved tasting room. The bill would add an authorization for a brandy manufacturer to sell brandy it manufactures at retail for consumption on or off the premises in an approved tasting room located on the brandy manufacturers manufacturing premises and would add an authorization for a mixed spirit drink to be sold by the manufacturer at retail for consumption on or off the premises in an approved tasting room.

The bill would delete provisions pertaining to a wine maker selling its wine in a restaurant it owned and conducting wine tastings and pertaining to a brandy manufacturer or small distiller conducting tastings of brandy and spirits the vendor made.

MCL 436.1537

## Senate Bill 1165

Senate Bill 1165 would define “alternating proprietorship” to mean an arrangement in which two or more wine makers or small wine makers, or brewers or micro brewers, take turns using the same space and equipment to manufacture wine or beer, respectively, under the Code and federal law.

“Approved tasting room” would be a tasting room approved by the Liquor Control Commission.

“Bottle” or “bottling” would mean a process, separate from manufacturing, using owned or leased equipment to fill and seal a container, including a keg, with alcohol for sale at

wholesale or retail in accordance with the Code. The terms would not include filling a growler for sale at retail.

The bill would also revise several other definitions contained in the Code to conform to changes proposed by other bills in the legislative package.

MCL 436.1105

### **Tie-bars**

A tie-bar means a bill cannot take effect unless a bill to which it is tie-barred is also enacted. This package of bills contains the following tie-bars:

- Senate Bills 1154 through 1156, 1159 through 1161, and 1164 through 1166 are reciprocally tie-barred to each other.
- Senate Bills 1157 and 1158 are tie-barred to Senate Bill 1160.
- Senate Bills 1162 and 1163 are tie-barred to Senate Bill 1166.
- Senate Bill 1167 is tie-barred to Senate Bill 1156.
- Senate Bill 1168 is tie-barred to Senate Bills 1164 and 1159.

### **BRIEF DISCUSSION:**

According to proponents of the bill package, the bills are needed to modernize, update, and clarify provisions of the Michigan Liquor Control Code. Reportedly, some in the industry are operating in grey areas of the Code, and in some instances, licensees are operating outside the Code's parameters. Supporters say the bills will codify some current practices and clarify others, with the result being the ability for wineries, distilleries, distributors, and retailers to continue to grow Michigan products and thrive in a competitive business while being clear on the requirements and parameters of the Code.

For instance, in one significant change, the bill package would allow brewers and microbrewers to establish tasting rooms, something currently allowed only for wineries and distillers. Manufacturers would be allowed to share a tasting room and to sell their products without having to obtain a Class C license, thereby preserving Michigan's three-tier system of separating manufacturing, distributing, and selling at retail. Licensees would retain the ability to have unlimited tasting rooms around the state, but at five of those locations would have greater flexibility in serving sizes, also without having to obtain a Class C license.

### **FISCAL IMPACT:**

Senate Bills 1154 to 1158, 1160 to 1163, and 1165 to 1168 would not have a fiscal impact on any unit of state or local government.

Senate Bill 1159 would not have a significant fiscal impact on the Department of Licensing and Regulatory Affairs (LARA) or on other units of state or local government. LARA

indicated that several classes of licensee are currently able to conduct tastings after paying a fee of \$100 per location, in accordance with section 537 of the Liquor Control Code. Senate Bill 1159 would retain the \$100 fee for the expanded number of licensees that could obtain a tasting room license, requiring each manufacturer involved with operating the tasting room to remit the fee. The bill stipulates that revenue collected from manufacturers that are owned by the same person and share the same address (subsection (7) of the bill) would be remitted to the Liquor Control Enforcement and License Investigation Revolving Fund.

Senate Bill 1164 would not have a significant fiscal impact on LARA or on other units of state or local government, for the reasons addressed for Senate Bill 1159.

## **POSITIONS:**

The following entities indicated support for the bills (12-4-18):

- Michigan Liquor Control Commission
- Michigan Brewers Guild
- Michigan Wine Producers Association
- Michigan Beer & Wine Wholesalers Association
- Michigan Retailers Association
- Michigan Craft Distillers Association
- Michigan Licensed Beverage Association
- Michigan Spirits Association
- Michigan Wine Institute
- Meijer
- Grand Rapids Area Chamber of Commerce

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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.