

GROWLERS: ELIGIBILITY TO FILL

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House Bill 5175 (substitute H-1 as reported from committee)

Sponsor: Rep. Tommy Brann

Committee: Regulatory Reform

Complete to 11-14-17

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

(Enacted as Public Act 40 of 2018)

BRIEF SUMMARY: House Bill 5175 would amend the Michigan Liquor Control Code to revise the type of liquor license a business would need to lawfully fill and sell a growler of beer. Specifically, the bill would only require a person to hold a specially designated merchant (SDM) license. The bill would also exempt microbrewers and brewpubs from certain growler labeling requirements.

FISCAL IMPACT: House Bill 5175 would not have fiscal impacts on any units of state or local government.

THE APPARENT PROBLEM:

Craft beer continues to grow in popularity among beer drinkers, and Michigan is now known for its many fine quality small brewers. Though many craft beers can be bought in local grocery stores and liquor stores, many consumers like to purchase draft beer from their favorite liquor establishment in growlers. A growler is a refillable and resealable container that is intended for, and used only for, the sale of beer for consumption off the licensed premises. A growler cannot hold more than 1 gallon of beer (typically, a growler holds a half gallon, or 64 ounces). Growlers enable beer fans to purchase fresh tap beer to enjoy at home, a picnic, or another setting.

Currently, to be able to sell beer in growlers, an establishment must either hold both a specially designated merchant license (SDM, which allows for the sale of beer or wine for off-premises consumption) and a specially designated distributor license (SDD, which allows for the sale of beer, wine, and spirits for off-premises consumption) or hold an on-premises liquor license such as a Class C, tavern, or club liquor license (see *Background Information* below for more information). This means that growlers are currently sold and refilled by brewers, microbrewers, brewpubs, and on-premises licensees such as bars and restaurants that also have a take-out beer and wine license (SDM).

Some see the current growler laws as burdensome to the craft beer industry. Though recently enacted legislation allows an SDM license to sell growlers if the licensee also holds an SDD or on-premises license, it has been said that SDD and on-premises licenses are much more difficult to obtain than an SDM license. Some believe that lowering the threshold for selling and refilling growlers would be beneficial to the beer industry and to consumers.

THE CONTENT OF THE BILL:

Under the Michigan Liquor Control Code, only an *eligible merchant* may fill and sell growlers with beer for off-premises consumption. Currently, the term means a person that holds both a specially designated merchant (SDM) license and one of the following licenses: a specially designated distributor (SDD), a Class C, tavern, Class A hotel, Class B hotel, club, Class G-1, or Class G-2.

House Bill 5175 would revise the definition of *eligible merchant* to require that the person hold only a specially designated merchant (SDM) license.

An SDM license allows a retailer to sell beer and wine for off-premises consumption. A "growler" means any clean, refillable, resealable container that is exclusively intended, and used only, for the sale of beer for consumption off the premises and that has a liquid capacity that does not exceed 1 gallon.

The following conditions are imposed on the sale of growlers (changes proposed by the bill are italicized):

- The premises where the filling of growlers takes place comply with the requirements for food service establishments under the Food Law.
- The growler is sealed and has a label affixed to it that includes at least the brand name and class of the beer, the net contents of the container, and the name of the retailer filling the growler. *The bill would exempt from these labeling requirements a brewpub (but only as to beer that the brewpub produces) and a micro brewer or brewer.*
- The eligible merchant or the merchant's agent or employee does not fill a growler in advance of the sale.
- The eligible merchant or the merchant's agent or employee uses only containers that have a capacity of 5 gallons or more to fill a growler.
- The beer to be dispensed has received a registration number from the Michigan Liquor Control Commission and has been approved for sale by the commission.
- The eligible merchant complies with all applicable rules promulgated by the commission.

[Under Section 537, a "brewpub" is a class of vendor that may sell beer manufactured on the premises by the licensee for consumption on or off the premises by a Class C, tavern, or a Class A or Class B hotel. A "micro brewer or brewer" is a class of vendor where beer produced by the micro brewer or brewer may be sold to a consumer for consumption on or off the brewery premises.]

The bill would take effect 90 days after its enactment.

MCL 436.1537

BACKGROUND INFORMATION:

An SDD license allows a retailer to sell spirits for off-premises consumption. A Class C licensee may sell beer, wine, mixed spirit drinks, and spirits at retail for on-premises consumption. A tavern licensee may sell beer and wine for on-premises consumption. A Class A hotel licensee may sell beer and wine, and a Class B hotel licensee may sell beer, wine, mixed spirit drink, and spirits, for consumption on the premises and in the rooms of registered guests. A club licensee and a Class G-1 licensee may sell beer, wine, mixed spirit drink, and spirits, and a Class G-2 licensee may sell beer and wine, for on-premises consumption only to members. A club is a nonprofit association. A Class G-1 or G-2 licensee is a golf course facility.

ARGUMENTS:

For:

The bill would eliminate unnecessary regulations and therefore enable more businesses to grow their tap beer business. Under the bill, only a specially designated merchant license (SDM) would be needed to sell and/or refill growlers. The benefit to consumers would be easier access to fresh tap beer, as brewers could expand access to their products by providing kegs of their beer to SDM licensees (such as grocery or convenience stores selling beer and wine) for consumers to purchase or refill their growlers. Some say that the current laws raise beer prices and drive some businesses underground. Lowering the threshold of who can sell and fill growlers, as well as exempting small brewers from current growler labeling requirements, will allow the market to grow and ease regulatory burdens that can be confusing and expensive to follow.

Against:

Though no arguments against the bill were offered in committee, concerns were raised about whether establishments filling growlers would be inspected for safety for consumers and workers. Also, amendments such as these are seen by some as weakening the regulation of alcohol and encouraging the consumption of alcoholic beverages. Besides drunk driving, alcohol also is a contributing factor to many of society's ills such as domestic violence, sexual assaults, and the commission of crimes in general. Some would argue therefore that alcohol regulations should be tightened and access more restricted.

Response:

According to information posted on the Liquor Control Commission's website regarding licensing requirements for specially designated merchant licenses and general information, an applicant for an SDM license must also hold and maintain a Retail Food Establishment License or Extended Retail Food Establishment License issued under the Food Law of 2000. Retail food licensees (e.g., grocery stores, package stores, and convenience stores) are inspected by the Michigan Department of Agriculture and Rural Development.

As for the loosening of liquor laws endangering the citizens of the state, some supporters of the bill say that there is no evidence that Michigan's laws, which are more stringent than many states' laws, protects citizens or consumers more than those living in or visiting a non-control state. It may be that the bills simply give consumers greater choice regarding beer purchases, and do not necessarily increase beer consumption.

POSITIONS:

A representative of the Mackinac Center for Public Policy testified in support of the bill. (11-1-17)

A representative of Cedar Springs Brewing Company testified in support of the bill. (11-8-17)

The Michigan Brewers Guild indicated support for the bill. (11-1-17)

The Michigan Retailers Association indicated support for the bill. (11-1-17)

The Michigan Beer and Wine Wholesalers Association indicated a neutral position on the bill. (11-1-17)

The Michigan Liquor Control Commission does not have a position on the bill. (11-1-17)

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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.