



Senate Fiscal Agency  
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BILL ANALYSIS



Telephone: (517) 373-5383  
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Senate Bills 504 through 507 (as enacted)  
Senate Bill 650 (as enacted)  
House Bill 4277 (as enacted)  
House Bills 4709, 4710, and 4711 (as enacted)  
Sponsor: Senator Joe Hune (SB 504-507 & 650)  
Representative Ray Franz (H.B. 4277)  
Representative Kevin Cotter (H.B. 4709)  
Representative Peter MacGregor (H.B. 4710)  
Representative Andy Schor (H.B. 4711)  
Senate Committee: Regulatory Reform  
House Committee: Regulatory Reform

**PUBLIC ACTS 46 through 49 of 2014**  
**PUBLIC ACT 50 of 2014**  
**PUBLIC ACT 236 of 2013**  
**PUBLIC ACTS 42, 43, & 44 of 2014**

Date Completed: 4-4-14

**CONTENT**

The bills amended the Michigan Liquor Control Code with respect to the distribution of promotional items to licensees; the possession and use of brand logoed barware; the issuance of a conditional liquor license; the payment of taxes on beer, wine, and mixed spirit drink; the sale of beer to a retailer by a qualified micro brewer; the capacity of a micro brewer; a brewpub's interest in other brewpubs; the on-premises sale of beer by a brewer or micro brewer; and the severability of the Code's provisions.

**Senate Bill 504** provides for the severability of any provision of the Code found to be unconstitutional, and revised the Code's provision on how it must be construed.

**Senate Bill 505** does the following:

- Allows manufacturers, sellers, and distributors of alcohol to give another licensee advertising items that promote brands and prices of alcohol.
- Allows a retailer to possess and use certain brand logoed barware that advertises spirits, as long as the items are purchased from a manufacturer of spirits, vendor of spirits, broker or salesperson, or barware retailer.
- Allows a retailer to possess and use certain brand logoed barware that advertises beer or wine, as long as the items are purchased from a barware retailer.
- Defines what items constitute "barware" and allows the Liquor Control Commission (LCC) to alter that definition by rule.
- Prescribes a fine of up to \$2,500 for a manufacturer, seller, or distributor that provides or sells barware in violation of the Code.

**Senate Bill 506** does the following:

- Requires the tax on beer manufactured outside of Michigan to be paid by the wholesaler assigned to distribute the beer, beginning on February 1, 2015.
- Allows an in-State brewer to designate a wholesaler to pay the tax on behalf of the brewer, beginning on February 1, 2015.
- Specifies that the beer tax may not be collected on beer that is damaged in the process of distribution (in addition to beer damaged in the process of brewing, packaging, and storage) and is not offered for sale.

- Specifies that the beer tax credit available to certain brewers may be claimed regardless of whether the tax is remitted by the brewer or a designated wholesaler.
- Requires the LCC to establish by rule a method for collecting the beer tax and reporting requirements for verification of the remission of taxes.
- Prohibits the LCC from requiring the beer tax to be paid in less than monthly intervals.

**Senate Bill 507 does the following:**

- Requires the taxes on wine and mixed spirit drink manufactured outside of Michigan to be paid by the wholesaler assigned to distribute the wine or mixed spirit drink, beginning on February 1, 2015.
- Allows an in-State wine maker or manufacturer of a mixed spirit drink to designate a wholesaler to pay the tax on behalf of the wine maker or manufacturer, beginning on February 1, 2015.
- Requires the LCC to establish by rule a method for collecting the wine and mixed spirit drink taxes and reporting requirements for verification of the remission of the taxes.
- Prohibits the LCC from requiring the wine and mixed spirit drink taxes to be paid in less than monthly intervals.

**Senate Bill 650 allows a "qualified micro brewer", or an out-of-State entity that is the substantial equivalent of a micro brewer, to sell and deliver beer to a retailer in Michigan if certain conditions are met.**

**House Bill 4277 provides for the issuance of a conditional liquor license after a person submits an application for a license under the Code, as follows:**

- A conditional license may be issued to an applicant seeking to transfer ownership of or an interest in an existing license at the same location, or to an applicant for an initial license.
- The Liquor Control Commission will have to issue an approved conditional license within 20 business days of receiving a completed application and required documentation for a single location, or 30 business days for multiple locations.
- A conditional license will expire when the LCC approves or denies the license that is the basis for the conditional license; one year after it is issued; or when the initial application is canceled, whichever occurs first.
- The fee for a conditional license will be \$300.
- Upon issuing a conditional license and until it expires, the LCC will have to place an existing license in escrow.

**House Bill 4709 changed the definition of "micro brewer" to refer to a brewer that makes less than 60,000 barrels of beer per year, rather than less than 30,000 barrels.**

**House Bill 4710 allows a brewpub to have an interest in up to five other brewpubs (rather than up to two), as long as the combined production of all locations does not exceed 18,000 barrels of beer per year (rather than 5,000 barrels).**

**House Bill 4711 allows a brewer not licensed as a micro brewer to sell its beer for on-premises consumption at up to two locations on its licensed brewery premises, rather than at just one location. The bill also allows micro brewers to sell beer for on-premises consumption at multiple licensed locations.**

All of the bills were tie-barred. House Bill 4277 will take effect on May 22, 2014. The rest of the bills took effect on March 25, 2014.

**Senate Bill 504**

The bill specifies that if any provision of the Code is found to be unconstitutional by a court of competent jurisdiction and all rights of appeal have expired or been exhausted, the offending provision must be severed and does not affect the remaining portions of the Code.

The bill also requires the Code to be construed to effect the intent and purposes set forth in it and to protect the public health, safety, and welfare of the citizens of Michigan. Previously, the Code stated that it had to be liberally construed to effect the intent and purposes set forth in it.

## **Senate Bill 505**

### **Secondary Use Restrictions**

Section 609 of the Code prohibits a manufacturer, mixed spirit drink manufacturer, warehouse, wholesaler, outstate seller of beer, outstate seller of wine, outstate seller of mixed spirit drink, or vendor of spirits from aiding or assisting any other vendor by gift, loan of money or property of any description, or "other valuable thing", or by giving premiums or rebates. It also prohibits a vendor from accepting those items. Under the bill, these prohibitions apply except as described below and in the provisions regarding brand logoed barware.

The bill defines "other valuable thing" as any goods, services, or intangible goods that are provided to another licensee that have value regardless of whether the value is nominal. The term includes goods, services, or intangible goods that provide any benefit, regardless of how nominal, to the licensee, other than advertising the brands and prices of alcohol produced by the manufacturer, sold by the outstate seller of beer, wine, or mixed spirit drink, or distributed by the wholesaler, except those goods, services, or intangible goods approved by rule or order of the LCC before January 1, 2014.

The bill allows a manufacturer, mixed spirit drink manufacturer, warehouse, wholesaler, outstate seller of beer, wine, or mixed spirit drink, or vendor of spirits to provide another licensee with advertising items that promote the brands and prices of alcohol produced, sold, or distributed by the entity providing those items. Providing the advertising items must be done in a manner consistent with the Liquor Control Commission's rules, regulations, and orders. Except as provided below and in the provisions regarding brand logoed barware, the advertising items may not have any use or value beyond the actual advertising of brands and prices.

Except for orders that were approved for specific sponsorship or festivals, a manufacturer, mixed spirit drink manufacturer, warehouse, wholesaler, outstate seller of beer, outstate seller of wine, outstate seller of mixed spirit drink, or vendor of spirits may provide goods and services to another licensee that the LCC approved pursuant to rules or order adopted before January 1, 2014, and the following advertising items:

- Alcoholic liquor recipes literature.
- Calendars and matchbooks.
- Removable tap markers or signs.
- Table tents.
- Shelf talkers.
- Bottle neckers.
- Cooler stickers.
- Blinking and nonblinking buttons.
- Menu clip-ons.
- Mirrors.
- Napkin holders.
- Spirits cold shot tap machines.
- Alcoholic liquor drink menus.

### **Brand Logoed Barware**

The bill prohibits a retailer from using or possessing, at its licensed premises, advertising items that have a use or value beyond the actual advertising of brands and prices of alcoholic liquor except for those items listed above or as otherwise described below.

The bill permits a retailer to possess and use brand logoed barware that advertises spirits as long as those items are purchased from a manufacturer of spirits, vendor of spirits, salesperson,

broker, or barware retailer. A retailer also may possess and use brand logoed barware that advertises beer or wine as long as those items are purchased from a barware retailer. The retailer must maintain the receipts of all purchased brand logoed barware for at least three years and make them available for inspection by the LCC. Beginning in the 2015 licensing year, a retailer must disclose, on the application for renewal of an existing license and in a manner the LCC prescribes, if the retailer purchased any barware during the immediately preceding license year.

The bill defines "barware" as the following brand logoed items:

- Trays.
- Coasters.
- Napkins.
- Shirts.
- Hats.
- Pitchers.
- Drinkware that is intended to be reused.
- Bar mats.
- Buckets.
- Bottle openers.
- Stir rods.
- Patio umbrellas.
- Any packaging used to hold and deliver alcohol that a retailer purchases.
- Any other items added by the LCC, pursuant to the bill.

Not sooner than 18 months after the bill's effective date, the LCC may by rule add an item to or remove an item from the definition of "barware". It may not add or remove more than one item per rule and may not promulgate more than one rule at a time on the barware definition. The LCC may not issue a rule that adds refrigerator systems, draft systems, or furniture to the definition. A rule, regulation, or order adopted after January 1, 2014, that is not adopted according to this provision and that is not consistent with, or is in conflict with, Section 609 is void and unenforceable.

The bill defines "barware retailer" as a person that offers brand logoed barware for sale to retailers, regardless of whether it is in their ordinary course of business, and that is not licensed as, or directly or indirectly affiliated with, a manufacturer of beer or wine, mixed spirit drink, manufacturer, warehouse, wholesaler, outstate seller of beer, outstate seller of wine, or outstate seller of mixed spirit drink. A licensing agreement authorizing use of a brand logo does not constitute a direct or indirect affiliation.

The bill defines "broker" as a person, other than an individual, that is licensed by the LCC and that is employed or otherwise retained by a manufacturer of spirits or a vendor of spirits to sell, promote, or otherwise assist in the sale or promotion of spirits.

"Salesperson" means a person who is employed by a vendor of spirits or a broker and who is licensed by the LCC to sell, deliver, or promote, or otherwise assist in the sale of spirits in Michigan.

#### Penalty

Under the bill, in addition to penalties otherwise available under the Code, a manufacturer of beer or wine, mixed spirit drink manufacturer, warehouse, wholesaler, outstate seller of beer, outstate seller of wine, or outstate seller of mixed spirit drink that provides or sells barware and is not authorized to do so is subject to a fine of up to \$2,500 as determined by the LCC. Multiple violations resulting from the same incident may be treated as a single violation for purposes of imposing any penalty under the Code.

## Other Provisions

Under the bill, an on-premises retailer that hosts an on-premises brand promotional event conducted by a wholesaler or supplier has 14 days after the event to remove from the premises any brand logoed merchandise from the event in order to maintain compliance with Section 609.

The bill specifies that the Code, and rules promulgated under it, do not prevent a retailer that holds only an off-premises license from purchasing brand logoed inventory and selling that inventory to its customers.

## **Senate Bill 506**

### Beer Tax

The Code requires the LCC to levy and collect a tax on all beer manufactured or sold in Michigan at the rate of \$6.30 per barrel. The tax must be paid by the brewer or brewpub, if the beer is manufactured in Michigan. The tax must be paid by the wholesaler or the person from whom the beer is purchased, as designated by the Commission, if the beer is manufactured outside of the State.

Under the bill, those payment arrangements apply before February 1, 2015. On and after that date, the tax must be paid by the brewer or brewpub (as currently required), if the beer is manufactured in Michigan. If the beer is manufactured outside of Michigan, the tax must be paid by the wholesaler assigned to distribute the beer and it must be levied and collected on the number of barrels the wholesaler actually sold to licensed retailers in Michigan. A brewer may designate a wholesaler to pay the tax on behalf of the brewer and, if it does so, the brewer must notify the LCC of the designation and give the Commission a copy of its brewer's report of operations that it filed with the U.S. Department of Treasury's Alcohol and Tobacco Tax and Trade Bureau for each calendar year.

The Code provides that the beer tax may not be collected on beer that is damaged in the process of brewing, packaging, and storage, and is not offered for sale. The bill added beer damaged in the process of distribution to that provision.

The Code allows an eligible brewer to claim a credit against the beer tax in the amount of \$2 per barrel for the first 30,000 barrels. The bill specifies that an eligible brewer may claim the credit or request a refund, in a manner determined by the LCC, regardless of whether the tax is remitted to the State by the brewer or a designated wholesaler. (As used in this provision, the Code defines "eligible brewer" as a brewer, whether or not located in Michigan, or brewpub that manufactures not more than 50,000 barrels of beer during the tax year for which the credit is claimed.)

### Rules

The Code requires the LCC to establish by rule a method for the collection of the beer tax. The bill also requires the Commission to establish by rule reporting requirements for wholesalers, brewers, brewpubs, and outstate sellers of beer to verify the remission of taxes to the State. The LCC may not require that the tax be paid in less than monthly intervals.

## **Senate Bill 507**

### Wine & Mixed Spirit Drink Taxes

The Code requires the LCC to levy and collect a tax of 13.5 cents per liter on wine containing 16% or less of alcohol by volume sold in Michigan, and 20 cents per liter on wine containing more than 16% of alcohol by volume sold in Michigan, if sold in bulk and in a like ratio if sold in smaller quantities.

The Code also requires the Commission to levy and collect a tax of 48 cents per liter on all mixed spirit drink sold in the State, if sold in bulk or a like ratio if sold in smaller quantities.

Under the bill, on and after February 1, 2015, if the wine or mixed spirit drink is manufactured in Michigan, the tax must be paid by the wine maker or manufacturer of the mixed spirit drink. If the wine or mixed spirit drink is manufactured outside of Michigan, the tax must be paid by the wholesaler assigned to distribute the wine or mixed spirit drink.

The bill allows a wine maker or manufacturer of a mixed spirit drink to designate a wholesaler to pay the tax on behalf of the wine maker or manufacturer. If the wine maker or manufacturer does so, it must notify the LCC of the designation and give the Commission a copy of its report of wine premises operations that it filed with the U.S. Department of Treasury's Alcohol and Tobacco Tax and Trade Bureau for each calendar year.

Under the bill, a wholesaler that is responsible for the payment of the tax, or that is designated to pay it on behalf of the wine maker or mixed spirit drink manufacturer, is required to pay the tax only on the number of liters the wholesaler actually sold to licensed retailers.

### Rules

The bill requires the LCC to establish by rule a method for the collection of the wine and mixed spirit drink taxes and reporting requirements for wholesalers, wine makers, outstate sellers of mixed spirit drink, and outstate sellers of wine to verify the remission of taxes to the State. The LCC may not require the tax to be paid in less than monthly intervals.

### **Senate Bill 650**

The bill allows a "qualified micro brewer", or an out-of-State entity that is the substantial equivalent of a qualified micro brewer, to sell and deliver beer to a retailer in Michigan if all of the following conditions are met:

- The retailer is not located in a sales territory for which the qualified micro brewer has granted exclusive sales rights to a wholesaler under the Code for the sale of any brand or brands of beer the micro brewer produces.
- The beer is sold and delivered by an employee of the micro brewer, not an agent, and is transported and delivered in a vehicle owned by the qualified micro brewer, not by a third-party delivery service.
- The qualified micro brewer is in compliance with applicable State and Federal law and regulatory provisions, including requirements related to employees who sell and deliver beer to retailers, vehicles used to deliver beer to retailers, and price schedules and temporary price reductions.

The bill defines "qualified micro brewer" as a micro brewer that produces less than 1,000 barrels of beer per year. To determine the 1,000-barrel threshold, all of a micro brewer's brands and labels, whether brewed within or outside of Michigan, must be combined.

### **House Bill 4277**

Under the bill, if, in addition to a completed application for a liquor license, an applicant submits a separate form requesting a conditional license, the LCC will have to approve or deny a conditional license to either of the following:

- An applicant seeking to transfer ownership of or an interest in an existing license at the same location to sell alcoholic liquor for consumption on or off the premises.
- An applicant seeking an initial license to sell alcoholic liquor for consumption on or off the premises, except for a specially designated distributor license (which allows a business to sell package liquor for off-premises consumption).

The applicant must include an acceptable proof of financial responsibility form and an executed property document with the form requesting a conditional license. Before issuing or denying the conditional license, the Commission must consider the applicant's arrest and conviction records or previous violation history in the management, operation, or ownership of a licensed business.

The LCC must issue a conditional license to an approved applicant within 20 business days after receiving a completed application and a completed conditional license request form and documentation for a conditional license at a single location. The Commission may take up to 30 business days to issue a conditional license to an applicant for multiple locations.

A conditional license will be nontransferable and nonrenewable, and will expire upon the earliest of the following:

- When the LCC denies the license application that serves as the basis for the conditional license, after all administrative remedies before the Commission have been exhausted.
- Twenty business days after the LCC approves the license application that serves as the basis for the conditional license.
- When the licensee or conditional licensee notifies the LCC in writing that the initial application should be canceled.
- One year after the date the conditional license is issued.

If a conditionally approved licensee fails to maintain acceptable proof of its financial responsibility, the Commission will be required, after notice and hearing, to suspend the conditional license until the licensee files an acceptable proof of financial responsibility form.

If a conditional license is revoked, the licensee may not recover from a local unit of government any compensation for property, future income, or future economic loss due to the revocation.

When a conditional license is issued and until it expires, the Commission will have to place an existing license in escrow in compliance with R 436.1107 of the Michigan Administrative Code. If the conditional license expires because a transfer of an existing license is denied or because the license is not transferred within the one-year period, an existing licensee may request the LCC to release the license from escrow, or may keep the license in escrow. If a license is kept in escrow, the escrow date for compliance with R 436.1107 will be the date the conditional license expires.

(Rule 436.1107 requires a license that is not in active operation to be placed in escrow with the Commission; generally gives the licensee five years after the expiration date of the escrowed license to put it into active operation; and requires the license to be renewed in the same manner as an active license.)

#### **House Bill 4709**

The bill defines "micro brewer" as a brewer that produces less than 60,000 barrels of beer per year for sale to consumers at the licensed brewery premises for consumption on or off the premises and to retailers as provided in Section 203 (the section Senate Bill 650 amended). Previously, "micro brewer" meant a brewer that produced less than 30,000 barrels of beer per year and was authorized to sell the beer to consumers at the licensed brewery premises for consumption on or off the premises.

As previously required, to determine the threshold, all brands and labels of a brewer, whether brewed in Michigan or outside of this State, must be combined and all facilities for the production of beer that are owned or controlled by the same person must be treated as a single facility.

#### **House Bill 4710**

The bill allows a brewpub to have an interest in up to five other brewpubs, if their combined production does not exceed 18,000 barrels of beer per calendar year. Previously, the Code allowed a brewpub to have an interest in up to two other brewpubs, if the combined production

of all the locations in which the brewpub had an interest did not exceed 5,000 barrels of beer per calendar year.

The Code defines "brewpub" as a license issued in conjunction with a Class C, tavern, Class A hotel, or Class B hotel license, authorizing the licensee to manufacture and brew not more than 5,000 barrels of beer per calendar year in Michigan and sell the beer produced at those licensed premises for consumption on or off the licensed brewery premises. (Each of the other types of licenses allows the sale of beer and wine, or beer, wine, and spirits, for on-premises consumption.)

### **House Bill 4711**

The bill allows a brewer that is not licensed as a micro brewer to sell its beer for on-premises consumption at not more than two locations in Michigan that are on any of its licensed brewery premises where the brewer engages in the production of beer. Previously, such a brewer was authorized to sell its beer for on-premises consumption at not more than one location in Michigan that was on any of its licensed brewery premises.

Also, under the bill, a licensed micro brewer that produces less than 30,000 barrels of beer per year may sell it for on-premises consumption at any location in Michigan on any of its licensed brewery premises where the micro brewer engages in the production of the beer. A licensed micro brewer that produces 30,000 barrels of beer or more per year may sell its beer for on-premise consumption at not more than three Michigan locations on any of its licensed brewery premises where the micro brewer engages in the production of beer.

Subject to the provisions described above, if a brewer or micro brewer has more than one licensed brewery premises, it may sell beer that it produces at one licensed brewery for on-premises consumption at any of its other licensed brewery premises.

The bill defines "engages in the production of beer" as the full and complete brewing process and not just a portion of the brewing process.

MCL 436.1925 (S.B. 504)  
436.1609 (S.B. 505)  
436.1409 (S.B. 506)  
436.1301 (S.B. 507)  
436.1203 (S.B. 650)  
436.1525 (H.B. 4277)  
436.1109 (H.B. 4709)  
436.1603 (H.B. 4710)  
436.1411 (H.B. 4711)

Legislative Analyst: Patrick Affholter

### **FISCAL IMPACT**

#### **Senate Bills 504-507 & 650**

The bills will have no fiscal impact on State or local government.

#### **House Bill 4277**

The bill will have a minor, but likely positive fiscal impact on the Department of Licensing and Regulatory Affairs and local law enforcement departments. The bill will allow on- and off-premises license applicants to pay a \$300 fee for a conditional license after certain requirements are met. The Michigan Liquor Control Commission will retain 50% of the revenue from these fees to fund its operations, and 50% will go to local law enforcement. To the extent that the additional revenue is greater than the costs associated with conditional licenses for both the Commission and local law enforcement, the bill will have a positive fiscal impact on those entities.



### **House Bill 4709**

The bill will have a minor, but likely positive, fiscal impact on the Department of Licensing and Regulatory Affairs and State General Fund/General Purpose revenue, and no fiscal impact on local units of government. The bill increases the number of barrels of beer that micro brewers may produce in a year from 30,000 to 60,000. Micro brewer license-holders pay a \$50 annual license fee for the first 15,000 barrels and \$50 for every 1,000 barrels produced thereafter, for an implicit annual maximum fee of \$800 for a microbrewery that produces 30,000 barrels. The bill raises this implicit maximum fee to \$2,300 for a micro brewer that produces the new 60,000-barrel maximum. As of June 2013, there were 92 micro brewer licenses active in the State. It is unknown how many of these micro brewers produce near the former maximum allowed. To the extent that the bill allows micro brewers at or near the previous maximum to expand production, the bill may result in additional license revenue. Assuming that any beer produced under the new maximum is sold to a wholesaler in Michigan, the bill also may generate additional beer excise tax revenue at the rate of \$6.30 per barrel. All beer excise tax revenue is credited to the State's General Fund.

### **House Bill 4710**

The bill will have a minor, but likely positive, fiscal impact on State General Fund/General Purpose revenue, and no fiscal impact on local units of government. To the extent that allowing brewpubs to operate additional locations and produce more beer causes brewpubs to sell more beer, the bill may generate additional beer excise tax revenue at the rate of \$6.30 per barrel for the State's General Fund.

### **House Bill 4711**

The bill will have no fiscal impact on State or local government.

Fiscal Analyst: Josh Sefton

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.