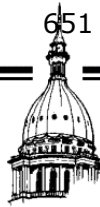




Senate Fiscal Agency
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BILL ANALYSIS



Telephone: (517) 373-5383
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Senate Bill 504 (Substitute S-2 as reported)
Senate Bill 505 (Substitute S-3 as reported)
Senate Bill 506 (Substitute S-1 as reported)
Senate Bill 507 (Substitute S-1 as reported)
Senate Bill 650 (Substitute S-1 as reported)
Senate Bill 651 (Substitute S-1 as reported)
House Bill 4277 (Substitute S-1 as reported)
Sponsor: Senator Joe Hune (S.B. 504-507, 650, & 651)
Representative Ray Franz (H.B. 4277)
Senate Committee: Regulatory Reform
House Committee: Regulatory Reform (H.B. 4277)

CONTENT

All of the bills would amend the Michigan Liquor Control Code.

Senate Bill 504 (S-2) would revise the Code's provision on how it must be construed, and would provide for the severability of any provision of the Code found to be unconstitutional.

The Code states that it must be liberally construed to effect the intent and purposes set forth in it. The bill instead would require 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.

Under the bill, if any provision of the Code were found to be unconstitutional by a court of competent jurisdiction and all rights of appeal had expired or been exhausted, the offending provision would have to be severed and could not affect the remaining portions of the Code.

Senate Bill 505 (S-3) would allow manufacturers, sellers, and distributors of alcohol to give another licensee advertising items that promoted brands and prices of alcohol, under certain circumstances.

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 would apply except as described below.

The bill would allow 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 promoted the brands and prices of alcohol produced, sold, or distributed by the entity providing those items. Providing the advertising items would have to be done in a manner consistent with the Liquor Control

Commission's rules, regulations, and orders. Except as provided below, the advertising items could not have any use or value beyond the actual advertising of brands and prices.

A manufacturer, mixed spirit drink manufacturer, warehouse, wholesaler, outstate seller of beer, wine, or mixed spirit drink, or vendor of spirits could provide goods and services to another licensee that were approved by the Commission pursuant to rules or orders adopted before January 1, 2013, but not including those orders that were approved for specific sponsorships or festivals. A rule, regulation, or order adopted after the bill's effective date that was not consistent with Section 609 or that was in conflict with it would be void and unenforceable.

A retailer could not use or possess, at its licensed premises, advertising items that had a use or value beyond the actual advertising of brands and prices of alcohol, except for those allowed as described above. A retailer could possess and use brand logoed glassware, however, but only if it were purchased from a glassware retailer. A retailer would have to submit a purchase order for brand logoed glassware to the Commission for approval. ("Glassware retailer" would mean a person that offers brand logoed glassware for sale to retailers and that is not licensed as, or directly or indirectly affiliated with, a manufacturer, mixed spirit drink manufacturer, warehouse, wholesaler, outstate seller of beer, wine, or mixed spirit drink, or vendor of spirits.)

Senate Bill 506 (S-1) would do the following:

- Allow an in-State beer maker to designate its wholesaler to collect the per-barrel beer tax that is levied against the brewer under the Code.
- Require the beer tax to be paid by the wholesaler assigned to distribute beer manufactured outside of Michigan.
- Prohibit the Liquor Control Commission from requiring the beer tax to be paid more frequently than quarterly.
- Allow a wholesaler designated to pay a brewer's beer tax to claim a beer-tax credit that is available to certain brewers.

Senate Bill 507 (S-1) would do the following regarding the wine and mixed spirit drink taxes levied under the Code:

- Require the tax to be paid by the manufacturer, unless it designated the wholesaler to pay the tax on the manufacturer's behalf, if the wine or mixed spirit drink were manufactured in Michigan.
- Require the tax to be paid by the wholesaler assigned to distribute the wine or mixed spirit drink, if it were manufactured outside of Michigan.
- Specify that a wholesaler responsible for paying the tax would be required to pay it only on the number of liters the wholesaler actually sold.
- Require the Liquor Control Commission to establish a method for collection of the taxes, but prohibit it from requiring payment more frequently than quarterly.

Senate Bill 650 (S-1) would allow a "qualified micro brewer", or an out-of-State entity that was the substantial equivalent of a qualified micro brewer, to sell and deliver beer to a retailer in Michigan if all of the following conditions were met:

- The retailer was not located in a sales territory for which the qualified micro brewer had granted exclusive sales rights to a wholesaler under the Code for the sale of any brand or brands of beer the micro brewer produced.
- The beer was sold and delivered by an employee of the micro brewer, not an agent, and was transported and delivered in a vehicle owned by the qualified micro brewer, not by a third-party delivery service.

- The qualified micro brewer was 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 would define "qualified micro brewer" as a micro brewer that produces less than 1,000 barrels of beer per year. In determining the 1,000-barrel threshold, all of a micro brewer's brands and labels would have to be combined, whether brewed within or outside of Michigan.

Senate Bill 651 (S-1) would change the definition of "micro brewer". Currently, a micro brewer is a brewer that produces less than 30,000 barrels of beer per year and that may sell the beer to consumers at the licensed brewery premises for consumption on or off the premises. Under the bill, a micro brewer would be a brewer that produced 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 (S-1) would amend).

House Bill 4277 (S-1) would provide for the issuance of a conditional liquor license after a person had submitted an application for a license under the Act, as follows:

- A conditional license could 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 would 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 would expire when the Commission approved or denied the license that was the basis for the conditional license; one year after it was issued; or when the initial application was canceled, whichever occurred first.
- The fee for a conditional license would be \$300.
- Upon issuing a conditional license and until it expired, the Commission would have to place an existing license in escrow.

The bill would take effect six months after it was enacted.

All of the bills are tie-barred to the others. The bills also are tie-barred to House Bills 4709, 4710, and 4711, all of which would amend the Michigan Liquor Control Code. (House Bill 4709 would change the definition of "micro brewer" to refer to a brewer that makes less than 60,000 barrels per year, rather than less than 30,000 barrels per year. House Bill 4710 would allow 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 did not exceed 18,000 barrels of beer (rather than 5,000 barrels). House Bill 4711 would allow a brewer to sell its beer for on-premises consumption at up to two locations that were on any of its licensed brewery premises where the brewer produced beer, rather than at just one location.)

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)
436.1109 (S.B. 651)
436.1525 (H.B. 4277)

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

Senate Bills 504 (S-2) through 507 (S-1), Senate Bill 650 (S-1), and Senate Bill 651 (S-1) would have no fiscal impact on State or local government.

House Bill 4277 (S-1) would have a minor, but likely positive fiscal impact on the Department of Licensing and Regulatory Affairs and local law enforcement departments. The bill would allow on- and off-premises license applicants to pay a \$300 fee for a conditional license after certain requirements were met. The Michigan Liquor Control Commission would retain 50% of the revenue from these fees to fund its operations, and 50% would go to local law enforcement. To the extent that the additional revenue would be greater than the costs associated with conditional licenses for both the Commission and local law enforcement, the bill would have a positive fiscal impact for those entities.

Date Completed: 10-30-13

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.