

ACTIONS PROHIBITED FOR MANUFACTURERS OF ALCOHOLIC BEVERAGES

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House Bill 4960 as reported from committee
Sponsor: Rep. Rebekah Warren

Analysis available at
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House Bill 4961 (H-4) as reported from committee
Sponsor: Rep. Beth Griffin

1st Committee: Regulatory Reform
2nd Committee: Ways and Means
Revised 10-22-19

BRIEF SUMMARY: House Bill 4961 would amend the Michigan Liquor Control Code to prohibit *manufacturers* from requesting, requiring, or prohibiting certain actions of wholesalers, including the production of financial records. House Bill 4960 would amend the Liquor Control Code to define “financial records.”

Manufacturer would include a brewer, microbrewer, wine maker, small wine maker, mixed spirit drink manufacturer, outstate seller of beer, outstate seller of wine, or outstate seller of mixed spirit drink.

FISCAL IMPACT: House Bill 4961 would have an indeterminate fiscal impact on the state, which would depend on the number of manufacturers who violate provisions of the bill and are subsequently ordered to pay civil fines. Civil fines of up to \$1,000 for a first offense, up to \$2,000 for a second offense, and up to \$5,000 for a third or subsequent offense could be ordered. Pursuant to the Liquor Control Code, revenue from civil fines would be deposited with the state treasurer to be credited to the state general fund. House Bill 4960 would not have an appreciable direct fiscal impact on the Department of Licensing and Regulatory Affairs (LARA) or on other units of state or local government.

THE APPARENT PROBLEM:

According to the bill sponsors and committee testimony, there is a concern that large breweries are participating in anti-competitive practices by changing the terms in equity agreements and threatening to mark wholesalers out of compliance if they object. Legislation has been offered to level the playing field for manufacturers and wholesalers.

THE CONTENT OF THE BILLS:

House Bill 4961 states that the purpose of the proposed new section 608 is to exercise Michigan’s authority under the 21st Amendment to the U.S. Constitution to ensure an orderly market for the distribution and sale of alcoholic beverages. The 21st Amendment may be better known as the amendment repealing “Prohibition,” or the prohibition of the sale of alcohol that had been enacted in the 18th Amendment in 1919.

The bill declares Michigan's intent to provide access to its alcoholic beverage market to all licensed alcoholic beverage manufacturers by ensuring the independence of wholesalers to distribute brands of beer, wine, mixed spirit drinks, and mixed wine drinks of multiple manufacturers free from the interference or control of any one manufacturer.

Under the bill, a manufacturer could not do any of the following:

- Except in specified circumstances, require a wholesaler to provide *financial records* related to the wholesaler's distribution of the brands manufactured or sold to it by another manufacturer, the compensation of the wholesaler's employees, or the wholesaler's business operations not directly related to the distribution of the brands manufactured or sold to the wholesaler by the manufacturer.
- Request a wholesaler to submit its financial records as a requirement for renewing or retaining an agreement.
- Require a wholesaler to spend a set amount of resources marketing or promoting the brands manufactured or sold to the wholesaler, based on certain sale records.
- Intentionally ship certain alcohol to a wholesaler that exceeds the order placed or forecast submitted. (For purposes of this provision, a manufacturer would be considered to have acted intentionally if the manufacturer invoiced or initiated an electronic funds transfer for the amount shipped in excess.)
- Prohibit a wholesaler from distributing the manufacturer's brands in vehicles with the markings or logos of other manufacturers' brands (or from distributing other manufacturers' brands in vehicles with the markings or logos of the manufacturer's brand).
- Require a distributor to pay for the development, installation, or use of reporting software owned or mandated by the manufacturer. (However, this would not prohibit a manufacturer from requiring that the distributor's electronic information systems be compatible with the manufacturer's.)
- Require a wholesaler to pay a fee or penalty for noncompliance with a manufacturer requirement, with the exception of potential damages as provided in the code.
- Set or attempt to set the rates of compensation for wholesaler employees, including incentives.
- Prohibit a wholesaler from utilizing any wholesaler-owned, -leased, or -controlled property or equipment to market, promote, deliver, or distribute the brands manufactured or sold by another manufacturer to the wholesaler.

Violation of any of these provisions could result in an order to pay a civil fine of up to \$1,000 for a first violation, up to \$2,000 for a second violation, and up to \$5,000 for a third or subsequent violation.

Exceptions

However, a manufacturer would be allowed to request, and a wholesaler could provide, financial records in any of the following circumstances:

- If the wholesaler was attempting to purchase the manufacturer's brands from another wholesaler.
- If the wholesaler and manufacturer were entering into an initial distribution agreement.
- If the financial records were solely related to the brands sold by the manufacturer to the wholesaler.

House Bill 4961 is tie-barred to House Bill 4960, which means that it could not take effect unless HB 4960 were also enacted.

Proposed MCL 436.1608

House Bill 4960 would define *financial records* as any document or summary of information contained in a document, including electronic documents, that contains information about the financial activities or position of a person, including information about assets, balance sheets, budgets, cash flow, earnings, revenue, expenditures, income, investments, losses, liabilities, payroll, profits, retained earnings, or taxes.

MCL 436.1107

ARGUMENTS:

For:

Supporters argued that all of the actions listed as prohibited under HB 4961 have been attempted to be imposed or are being imposed on distributors, or their imposition is being contemplated. The equity agreement is not a true contract by equals, they said, with manufacturers dictating the rules and threatening to begin termination proceedings if distributors object.

Against:

Critics argued that HB 4961 intrudes on what is essentially a family dispute and would introduce provisions that duplicate those in the existing Franchise Investment Act. There is no attempt by manufacturers to impact smaller-scale manufacturers, they said—only an attempt by manufacturers to promote their brands as best they can and to track the sales of those brands.

POSITIONS:

A representative of the Michigan Beer and Wine Wholesalers Association testified in support of the bills. (9-17-19)

The Michigan Brewers Guild indicated support for the bills. (9-17-19)

The Michigan Liquor Control Commission indicated a neutral position on the bills. (10-3-19)

Representatives of Anheuser-Busch testified in opposition to the bills. (9-17-19)

The Wine Institute indicated opposition to the bills. (10-8-19)

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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.