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## BILL ANALYSIS



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Senate Bill 1088 (as introduced 9-20-16)  
Sponsor: Senator Peter MacGregor  
Committee: Regulatory Reform

Date Completed: 9-21-16

**CONTENT**

**The bill would amend the Michigan Liquor Control Code to do the following:**

- **Allow a retailer that holds a specially designated merchant (SDM) license to use a third party delivery service by means of the internet or a mobile application to facilitate the sale of, or to deliver, beer or wine to a consumer, if the delivery service obtained a license from the Liquor Control Commission and other conditions were met.**
- **Allow the Commission to charge third party delivery service application and license fees.**
- **Allow a retailer that holds an SDM license to use a common carrier to sell and deliver wine to a consumer in the State by mail order, telephone, or electronic means, if various conditions were met.**
- **Establish reporting requirements for a common carrier that carried or transported alcoholic liquor into the State to a person in Michigan.**
- **Delete references to an out-of-State retailer that holds a license substantially equivalent to an SDM license in provisions that allow delivery of beer or wine to a consumer's home or other designated location, or delivery to municipalities surrounded by water.**

(A specially designated merchant license authorizes the sale of beer or wine, or both, for off-premises consumption.)

**Third Party Delivery Service**

The bill would allow a retailer that holds an SDM license to use a third party delivery service by means of the internet or a mobile application to facilitate the sale of, or to deliver, or both, beer or wine to the home or designated location of a consumer if all of the following conditions were met:

- The third party delivery service verified that the individual accepting delivery of the beer or wine was at least 21 years old.
- The retailer or consumer paid the fees associated with the delivery.
- The delivery service offered services for all brands.
- The delivery service made its services reasonably available to any retailer in delivery service's area.

Also, a manufacturer, warehouse, wholesaler, outstate seller of beer, or outstate seller of wine could not have a direct or indirect interest in the delivery service. Such an entity also

could not aid or assist a delivery service by gift or loan of money, property, or other valuable thing, and a delivery service could not accept it.

A third party delivery service could not deliver beer or wine unless it applied for and was granted a third party delivery service license by the Liquor Control Commission. The Commission could charge a reasonable application fee, initial license fee, and annual license renewal fee.

The bill would define "mobile application" as a specialized software program downloaded onto a wireless communication device.

"Third party delivery service" would mean a person licensed by the Commission that facilitates the sale of or delivers, or both, beer or wine to a consumer as provided in the bill. The term would not include a common carrier or a third party that provides delivery service to a municipality surrounded by water, as described below.

The Code permits a retailer that holds an SDM license in this State, or an out-of-State retailer that holds its state's substantially equivalent license, to use a third party that provides delivery service to municipalities in Michigan that are surrounded by water and inaccessible by motor vehicle to deliver beer and wine to the home or other designated location of a consumer if the delivery service is approved by the Commission and agrees to verify that the individual accepting delivery of beer and wine is at least 21 years old. The bill would delete the reference to an out-of-State retailer with a substantially equivalent license.

#### Use of Common Carrier

Subject to certain exceptions, the Code prohibits a person from selling, delivering, or importing alcoholic liquor, including liquor for personal use, in the State unless the sale, delivery, or importation is made by the Commission, its authorized agent or distributor, an authorized distribution agent approved by the Commission, or a person licensed by the Commission, or by prior written approval of the Commission.

Under the bill, for purposes of this provision, a retailer that holds an SDM license located in Michigan could use a common carrier to sell and deliver wine to a consumer in the State by means of any mail order, internet, telephone, computer, device, or other electronic means. The retailer would have to comply with all of the requirements described below.

The retailer would have to pay any applicable taxes to the Commission and pay any applicable taxes to the Department of Treasury as directed by the Department. On request of the Department, the retailer would have to furnish an affidavit to verify payment.

The retailer would have to comply with all prohibitions of the laws of the State, including sales to minors.

The retailer would have to verify the age of the individual placing the order by obtaining from him or her an affirmation that he or she was at least 21 years old. The person receiving and accepting the order on behalf of the retailer would have to record the name, address, date of birth, and telephone number of the individual placing the order on the order form or other verifiable record of a type and generated in a manner approved by the Commission, and provide a duplicate to the Commission.

On request of the Commission, the retailer would have to make available to it any document used to verify the age of the individual ordering or receiving the wine from the retailer.

The retailer would have to stamp, print, or label on the outside of the shipping container that the package "Contains alcohol. Must be delivered to a person 21 years of age or older". At

the time of delivery, the recipient would have to provide identification verifying his or her age and sign for the delivery.

The retailer also would have to place on the top panel of the shipping container a label containing the name and address of the individual placing the order and the name of the designated recipient, if different from the name of the individual placing the order.

The bill would define "common carrier" as a person that transports individuals or property for a fee.

#### Common Carrier Reporting Requirements

Under the bill, a common carrier that carried or transported alcoholic liquor into the State to a person in Michigan would have to submit quarterly reports to the Commission. A report would have to include all of the following about each delivery to a consumer in the State during the preceding calendar quarter:

- The name and business address of the person shipping alcoholic liquor.
- The name and address of the recipient of alcoholic liquor.
- The quantity of alcoholic liquor delivered to a consignee.
- The date of the delivery.

In addition, the common carrier would have to maintain the books, records, and documents supporting a quarterly report for three years unless the Commission notified the carrier in writing that they could be destroyed. Within 30 days after the Commission's request, the common carrier would have to make the books, records, and documents available for inspection during normal business hours. Also, within 30 days after the request of a local law enforcement agency or local unit of government, the common carrier would have to make the books, records, and documents available for inspection where the carrier resided or did business.

A report submitted to the Commission under these provisions would be subject to disclosure under the Freedom of Information Act.

#### Delivery to Consumer's Home

Currently, except as provided for delivery to municipalities surrounded by water, a retailer that holds an SDM license in the State, an out-of-State retailer that holds its state's substantially equivalent license, a brewpub, a micro brewer, or an out-of-State entity that is the substantial equivalent or a brewpub or micro brewer may deliver beer and wine to the home or other designated location of a consumer in Michigan if the following requirements are met:

- The beer or wine, or both, is delivered by the retailer's, brewpub's, or micro brewer's employee and not by an agent or by a third party delivery service.
- The retailer, brewpub, or micro brewer or its delivery employee verifies that the individual accepting delivery is at least 21 years old.
- The retailer, brewpub, or micro brewer providing service to consumers, if applicable, has received alcohol server training through an approved server training program.

The bill would delete reference to an out-of-State retailer that holds its state's substantially equivalent license. Also, these provisions would apply except as provided for delivery to municipalities surrounded by water and as provided in the bill for the use of a third party delivery service by a retailer holding an SDM license.

## **FISCAL IMPACT**

The bill would have a neutral fiscal impact on the Michigan Liquor Control Commission (MLCC) and no fiscal impact on local units of government. The bill would require the MLCC to develop a licensing program for third party delivery services for beer and wine, and to establish fees for those seeking licensure as such. Since the bill would allow the MLCC to charge fees for application, initial licensing, and license renewal, it seems reasonable to assume that the fees would be set at a level that would allow the MLCC to recover its costs.

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