



Senate Fiscal Agency  
P.O. Box 30036  
Lansing, Michigan 48909-7536



Telephone: (517) 373-5383  
Fax: (517) 373-1986

House Bill 4960 (as passed by the House)  
House Bill 4961 (Substitute H-4 as passed by the House)  
Sponsor: Representative Rebekah Warren (H.B. 4960)  
Representative Beth Griffin (H.B. 4961)  
House Committee: Regulatory Reform  
Ways and Means  
Senate Committee: Regulatory Reform

Date Completed: 10-22-19

### **CONTENT**

**House Bill 4960 would amend the Michigan Liquor Control Code to define "financial records".**

**House Bill 4961 (H-4) would amend the Michigan Liquor Control Code to prohibit manufacturers from requiring, requesting, or prohibiting certain actions of wholesalers, and to prescribe penalties for manufactures who violated the bill's provisions.**

House Bill 4961 (H-4) is tie-barred to House Bill 4960.

### **House Bill 4960**

Under the bill, "financial records" would mean 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 the assets, balance sheets, budgets, cash flow, earnings, revenue, expenditures, income, investments, losses, liabilities, payroll, profits, retained earnings, and taxes.

### **House Bill 4961 (H-4)**

The bill states the following:

The purpose of this section is to exercise this state's authority under section 2 of Amendment XXI of the Constitution of the United States to ensure an orderly market for the distribution and sale of alcoholic beverages.

It is the intent of this state to provide access to this state's alcoholic beverages by ensuring the independence of wholesalers to distribute the brands of beer, wine, mixed spirit drinks, and mixed wine drinks of multiple manufacturers free from the interference or control of any one manufacturer.

A manufacturer could not do any of the following:

- Require a wholesaler to provide financial records directly or indirectly related to any of the following: i) its distribution of the brands manufactured or sold to the wholesaler by another manufacturer, ii) the compensation of its employees, or iii) its 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 any of 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 by the manufacturer to the wholesaler that was based on the sales revenue derived by the wholesaler's distribution of the brands manufactured or sold to it by the manufacturer.
- Intentionally ship beer, wine, mixed spirit drink, or mixed wine drink to a wholesaler that exceeded the order placed by the wholesaler or the forecast submitted by the wholesaler (which would mean invoicing or initiating an electronic funds transfer for the amount shipped in excess).
- Prohibit a wholesaler from distributing the brands the manufacturer manufactured or sold to the wholesaler in licensed vehicles that had markings or logos of brands manufactured or sold to the wholesaler by other manufacturers.
- Prohibit a wholesaler from distributing the brands manufactured or sold to the wholesaler by another manufacturer on a licensed vehicle that had the markings or logos of brands manufactured or sold to the wholesaler by the manufacturer.
- Require a distributor to pay for the development, installation, or use of reporting software owned or mandated by the manufacturer.
- Require a wholesaler to pay a fee or penalty, of any description, for noncompliance with a manufacturer requirement.
- Set or attempt to set the rates of compensation for a wholesaler employee, including incentives.
- Prohibit a wholesaler from using 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.

A manufacturer that violated these provisions could be ordered to pay a civil fine as follows:

- For a first violation, a civil fine of not more than \$1,000.
- For a second violation, a civil fine of not more than \$2,000.
- For a third or subsequent violation, a civil fine of not more than \$5,000.

A manufacturer could request and a wholesaler could provide financial records if any of the following circumstances applied:

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

As used in the bill, "manufacturer" would include a brewer, micro brewer, wine maker, small wine maker, mixed spirit drink manufacturer, outstate seller of beer, outstate seller of wine, or outstate seller of mixed spirit drink.

MCL 436.1107 (H.B. 4960)  
Proposed MCL 436.1608 (H.B. 4961)

Legislative Analyst: Drew Krogulecki

## **FISCAL IMPACT**

### **House Bill 4960**

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

### **House Bill 4961 (H-4)**

The bill would have an indeterminate fiscal impact on State government and no fiscal impact on local government. Under the bill, a manufacturer who violated its provisions could be ordered to pay a civil fine. A first violation could result in a civil fine of up to \$1,000 and a second violation could result in a civil fine of up to \$2,000. Subsequent violations could result in civil fines of up to \$5,000 each. The amount of revenue collected would depend on the number of manufacturers who violated the bill's provisions and the magnitude and number of the civil fines imposed. Revenue from these fines would be deposited into the General Fund.

Existing appropriations and staffing levels likely would be sufficient to allow the Department of Licensing and Regulatory Affairs to monitor manufacturers for potential violations of the new provisions.

Fiscal Analyst: Elizabeth Raczkowski

SAS\S1920\s4960sa

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.