

Legislative Analysis



MICHIGAN LIQUOR CONTROL CODE AMENDMENTS

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House Bill 6105 (H-1) as reported
Sponsor: Rep. Roger Hauck

Analysis available at
<http://www.legislature.mi.gov>

House Bill 6106 (H-1) as reported
Sponsor: Rep. Richard M. Steenland

House Bill 6107 (H-2) as reported
Sponsor: Rep. Michele Hoitenga

Committee: Regulatory Reform
Complete to 6-21-22

SUMMARY:

House Bills 6105, 6106, and 6107 would amend the Michigan Liquor Control Code to do, among other things, all of the following:

- Allow a manufacturer or retailer to offer electronic rebate coupons to a retail customer after the customer makes a purchase of an alcoholic beverage under certain conditions. (HB 6105)
- Provide conditions under which a supplier may manufacture a private label of beer, wine, or mixed spirit drink for a retailer. (HB 6106)
- Prohibit a retailer from holding a third-party facilitator service license. (HB 6106)
- Require that if demand for a beer, wine, mixed wine drink, or mixed spirit drink product exceeds supply, a manufacturer, supplier, or wholesaler must engage in reasonable efforts to make that product available for purchase by a wholesaler or retailer that places an order. (HB 6105)
- Establish conditions under which the code does not apply to a company that sells nonalcoholic products that a wholesaler owns or has a financial interest in and allow certain joint operations by such a company and the wholesaler. (HB 6105)
- Provide that, except for specified provisions, the code does not apply to the sale of nonalcoholic products by a wholesaler to a retailer. (HB 6105)
- Require a manufacturer or wholesaler to file with the Michigan Liquor Control Commission (MLCC) a schedule of prices and price changes relating to wine, mixed wine drink, and mixed spirit drink that the manufacturer or wholesaler makes or sells. (HB 6107)

House Bill 6105 would add three new sections to the code. Section 609g would establish the conditions under which the code applies to a wholesaler that sells nonalcoholic products to a retailer. Section 609h would allow a manufacturer or retailer to offer electronic rebate coupons to a retail customer after the customer makes a purchase of an alcoholic beverage. Section 609i would require that if demand for a beer, wine, mixed wine drink, or mixed spirit drink exceeds supply, then a manufacturer, supplier, or wholesaler would be required to engage in commercially reasonable efforts to make that product available for purchase by a wholesaler or a retailer that places an order.

Sale of nonalcoholic products by wholesaler

The bill would provide that the code does not apply to the sale, marketing, merchandising, or distribution of nonalcoholic products to a retailer by a wholesaler, except for the following:

- The wholesaler must comply with section 609 of the code, which regulates gifts and other benefits made to a licensee by a manufacturer.
- The wholesaler is prohibited from providing free nonalcoholic products to a retailer or providing credit to a retailer.

Company that sells nonalcoholic products that is owned by wholesaler

The bill would provide that the code does not apply to a company that sells nonalcoholic products that is owned by a wholesaler or in which a wholesaler has a direct or indirect financial stake if all of the following are true:

- The company is not a wholesaler.
- The company and the wholesaler have separate sales and delivery employees.
- The company and the wholesaler use separate delivery vehicles.
- The company and the wholesaler keep separate finances.
- The company does not engage in an activity on behalf of the wholesaler that would violate section 609 of the code.

If a wholesaler separately owns or has a direct or indirect financial interest in a company, the wholesaler and the company could do all of the following:

- Share human resources departments.
- Have a joint payroll.
- Lease warehouse space to each other.
- Have joint vehicle maintenance.
- Jointly recycle beverage containers.
- Share warehouse employees and equipment.

Electronic rebate coupons

The bill would allow a manufacturer or supplier to offer electronic rebate coupons directly to a retail customer after the retail customer purchases alcoholic liquor from a retailer within the following guidelines:

- The coupons have a specific expiration date and specific cash refund value on the coupons. The refund could be paid by cash, check, or debit card, through an electronic funds transfer to a bank account, or through an internet or mobile payment account.
- The coupons do not result in the retail customer's purchase of alcoholic liquor being below the retailer's cost.
- Coupons that can be applied to more than one specific product sold by that manufacturer or supplier must state the manufacturer or supplier to which they apply.
- Coupons must require the retail customer to purchase at least one product of alcoholic liquor to be redeemed. Coupons can be issued that require the retail customer to purchase two or more alcoholic liquor products from the same manufacturer or supplier to redeem the coupon.
- Coupons that require the purchase of a product other than alcoholic liquor cannot be issued.

- A wholesaler cannot pay for or participate in the offering of coupons except for providing signs that promote the electronic rebate coupon in accordance with section 610a of the code (which addresses promotion requirements).
- A manufacturer can only issue coupons that may be redeemable after a purchase of alcoholic liquor at all retail locations where that alcoholic liquor is sold.

Product availability

Finally, the bill would provide that, if demands exceed supply for a beer, wine, mixed wine drink, or mixed spirit drink product, a manufacturer, supplier, or wholesaler must engage in commercially reasonable efforts to make the beer, wine, mixed wine drink, or mixed spirit drink product available to purchase by a wholesaler that places an order as well as by a retailer that places the order.

Proposed MCL 436.1609g, 436.1609h, and 436.1609i

House Bill 6106 would allow a person licensed in the supplier tier to manufacturer a ***private label*** of beer, wine, or mixed spirit drink for a retailer if the MLCC determines that all of the following conditions are met:

- The supplier registers the private label with the MLCC as required in the Michigan Administrative Code.
- The supplier, independently of the retailer's involvement, appoints one or more wholesalers to distribute the private label product.
- The supplier complies with and does not violate section 305 of the code (regulating the relationship between wine and mixed wine drink manufacturers and the wholesalers of those products) or section 403 of the code (regulating the relationship between beer manufacturers and wholesalers), as applicable.
- The wholesaler engages in commercially reasonable efforts to make the private label available to a retailer that places an order for the private label beer, wine, or mixed spirit drink.
- An appointed wholesaler remains the wholesaler for the private label and any brand extensions of the private label regardless of whether the retailer switches the supplier that manufactures the private label, unless the wholesaler is terminated under section 305 or 403 of the code.

Private label would mean a brand of beer, wine, or mixed spirit drink that is manufactured by a supplier on behalf of a retailer using the retailer's recipe or intellectual property.

The bill also would prohibit the MLCC from issuing a wholesaler license to a producer of nonalcoholic beverages or an entity that the producer of nonalcoholic beverages has a direct or indirect ownership or financial interest in if the producer of nonalcoholic beverages or the entity has a direct or indirect ownership or financial interest in a person licensed in the supplier tier.

MCL 436.1105 and 436.1603

House Bill 6107 would require a manufacturer or wholesaler of wine, mixed wine drink, or mixed spirit drink to file certain pricing and fee data with the MLCC. The net cash price for

those products would have to be filed by kind, type, size, and brand. A manufacturer or wholesaler also would have to file with the MLCC a price change for its market area before the effective date of that change. The price change would have to continue for at least two weeks after the effective date of the change. The net cash price and price change filings would be exempt from disclosure under the Freedom of Information Act (FOIA) until one year after the filing was made.

The MLCC would have to periodically compare the net cash price change filing *for beer* made by a manufacturer or wholesaler with the manufacturer's or wholesaler's tax filing under section 301 (which pertains to the tax on *wine*).

A manufacturer or wholesaler could not charge a retailer a fee, other than a split case fee, that is in addition to the net cash price of a product, as with the MLCC . A split case fee charged by a manufacturer or wholesaler to a retailer would have to be at the same per unit rate, be nondiscriminatory, and not be based on a sliding scale. A manufacturer or wholesaler would have to file with the MLCC a split case fee charged under this provision.

Other changes

The bill would allow a manufacturer, outstate seller of beer, outstate seller of wine, or outstate seller of mixed spirit drink to provide a wholesaler with technology to assist in sales, marketing, delivery, merchandising, or training. An entity providing such training would have to comply with the code and rules promulgated under the code and obtain written approval from the MLCC authorizing the technology before it is provided to a wholesaler.

The bill also would prohibit a manufacturer or wholesaler from selling wine, mixed wine drink, and mixed spirit drink at a quantity discount.

MCL 436.1609a and proposed MCL 436.1609f

The bills are tie-barred to each other, which means that none of them would take effect unless all of them were enacted.

BRIEF DISCUSSION:

According to committee testimony, the purpose of the bills is to address several areas of existing law that offer insufficient clarity for licensees within Michigan's three-tier system regulating the manufacture, distribution, and sale of alcoholic beverages and to address situations where, in the view of the bills' proponents, actors are violating the spirit of existing law and additional regulation is needed to specifically address these actions. Additionally, some of the bills seek to update existing sections of the Liquor Control Code to allow for actions already authorized to take place using newer technologies (such as allowing electronic rebate coupons, in addition to the paper rebate coupons that can already be issued under certain conditions).

FISCAL IMPACT:

House Bills 6105, 6106, and 6107 are not anticipated to have an appreciable fiscal impact on any units of state or local government.

POSITIONS:

The following entities indicated support for the bills (5-24-22):

- Michigan Beer and Wine Wholesalers Association
- Wine Institute
- Great Lakes Wine and Spirits

The Michigan Liquor Control Commission indicated a neutral position on the bills. (6-7-22)

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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.