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BILL ANALYSIS

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Senate Bill 667 (Substitute S-2 as passed by the Senate)  
Sponsor: Senator Jim Stamas  
Committee: Regulatory Reform

Date Completed: 4-11-16

### **RATIONALE**

The Michigan Liquor Control Commission regulates alcohol sale and consumption under the Michigan Liquor Control Code, administrative rules, and Commission orders. The administrative rules provide specifications for wholesalers and retailers of alcohol in addition to what is in the statute. Commission orders are final decisions issued by the Liquor Control Commission. Apparently, the Commission, wholesalers, and retailers have suggested that several administrative rules, a Commission order, and other provisions regarding merchandising or advertising be modified and codified, in order to improve service to consumers.

### **CONTENT**

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

- **Expand the advertising items that licensees may provide to other licensees.**
- **Permit a manufacturer, outstate seller, or vendor of spirits to provide brand logoed merchandise to a retailer to promote the brand and price of its products, if the merchandise were used for display purposes only and other conditions were met.**
- **Require a manufacturer or wholesaler to file with the Liquor Control Commission a schedule of net cash prices to the retail licensee for all brands of case and keg beer for its market area, and to file a beer package price reduction for its market area.**
- **Require a filed beer package price reduction to remain in effect for 90 days, but allow a manufacturer or wholesaler to increase or reduce the price under certain circumstances.**
- **Require a vendor representative and salesperson of a vendor of spirits, manufacturer of beer or wine, outstate seller of beer or wine, or wholesaler to keep records of expenditures for calls on retail licensees.**
- **Allow a vendor representative or salesperson of spirits or wine, a wholesaler of beer, a beer manufacturer's vendor representative or salesperson, or an outstate seller of beer to purchase drinks for on-premises retail customers for promotional purposes, subject to certain limitations.**

#### Advertising Item Regulations

The Code prohibits a manufacturer, mixed spirit drink manufacturer, warehouse, wholesaler, outstate seller of beer, wine, or mixed spirit drink, or vendor of spirits from aiding or assisting any other vendor by gift, loan of money or property, or other valuable thing. However, a manufacturer, mixed spirit drink manufacturer, warehouse, wholesaler, outstate seller of beer, wine, or mixed spirit drink, or vendor of spirits may, in a manner consistent with rules, regulations, and orders made by the Commission, provide another licensee with advertising items that promote the brands and prices of alcoholic liquor produced by the manufacturer; sold by the outstate seller of beer, wine, or mixed spirit drink; or distributed by the wholesaler.

In addition, except for those orders that were approved for specific sponsorships or festivals, a manufacturer, mixed spirit drink manufacturer, warehouse, wholesaler, outstate seller of beer, wine, or mixed spirit drinks, or vendor of spirits may provide to another licensee certain goods and services that were approved by the Commission before January 1, 2014, and the following items:

- Alcoholic liquor recipes literature.
- Calendars and matchbooks.
- Removable tap markers or signs.
- Table tents.
- Shelf tankers.
- Bottle neckers.
- Cooler stickers.
- Buttons, blinking and nonblinking.
- Menu clip-ons.
- Mirrors.
- Napkin holders.
- Spirits cold shot tap machines.
- Alcoholic liquor drink menus.
- Keg couplers that are lent to an on-premises retailer.
- Sporting event or entertainment tickets.

The bill would include suction cups, cooler door attachments, and tear pad holders among the items that may be provided to another licensee.

#### Brand Logoed Merchandise

The Code prohibits a retailer from using or possessing at its licensed premises advertising items that have a use or value beyond the actual advertising of brands and prices of alcoholic liquor except for the items listed in the Code. A retailer may possess and use brand logoed barware that advertises spirits if the items are purchased from a manufacturer of spirits, vendor of spirits, salesperson, broker, or barware retailer. A retailer also may possess and use brand logoed barware that advertises beer or wine if the items are purchased from a barware retailer.

Under the bill, a manufacturer, outstate seller, or vendor of spirits could provide brand logoed merchandise to an on-premises retailer and off-premises retailer to promote the brand and price of its products under R 436.1321(1) to (3) of the Michigan Administrative Code subject to all of the following conditions:

- Brand logoed merchandise could be used for display purposes only.
- Brand logoed merchandise could provide brand advertising only when used in display.
- Brand logoed merchandise would have to be returned to the alcoholic beverage supplier or wholesaler on completion of the display.
- Brand logoed merchandise could not be given to the retail licensee or the retail licensee's staff or any other person for his or her personal use.
- The value of the brand logoed merchandise on display could not exceed \$200 per item.
- Brand logoed merchandise that a licensee could use in the daily operation of the licensee's business would be prohibited.
- Brand logoed merchandise would have to be unilluminated.
- Brand logoed merchandise could not be more than 3,500 square inches in dimension.
- Brand logoed merchandise would have to be owned by the manufacturer or supplier, and ownership could not be transferred to the retail licensee, the retail licensee's employee, or any other person.
- A wholesaler could deliver and install a display using brand logoed merchandise provided without charge by a manufacturer or an outstate seller of beer, wine, or mixed drink.

(Rule 436.1321, or "Rule 21", contains regulations regarding contests and advertising articles. Rule 21(1) prohibits the advertising of alcoholic liquor connected with offering a prize or award on the completion of a contest, except with prior written approval of the Commission. Rule 21(2)

allows the publication and distribution of advertising material that does not contain the name of a retail licensee and does not have a secondary value, but explains the production, sale, or consumption of alcoholic liquor. Rules 21(3) permits the publication and distribution of alcoholic liquor recipe literature that does not contain the name of a retail licensee.)

#### Net Cash Price Filing & Beer Package Pricing

The bill would require a manufacturer or wholesaler to file with the Commission a schedule of net cash prices to the retail licensee for all brands of case and keg beer for its market area.

Additionally, a manufacturer or wholesaler would be required to file with the Commission a beer package price reduction for its market area. The manufacturer or wholesaler would have to file the price reduction before its effective date. A price reduction filed with the Commission would have to continue for at least 90 days after the effective date.

The bill would allow the beer package price for a market area to be increased during the 90-day period to reflect a tax increase in the market area or to reflect a general industry price increase in the market area. The price could be decreased during the 90-day period if both of the following conditions were met:

- The price reduction was not greater on a cents-per-case basis than the price reduction filed by the competition.
- The price reduction continued for the balance of the 90 days filed by the competition.

A net cash price or beer package reduction filed with the Commission would be exempt from disclosure under the Freedom of Information Act, until one year after the net cash price or price reduction was filed.

The Commission would have to periodically compare a manufacturer's or wholesaler's filing with its respective tax filing under Section 409 of the Code. (Section 409 provides for the taxation of all beer manufactured or sold in the State.)

The bill would prohibit a manufacturer or wholesaler from selling beer at a quantity discount.

The bill states that these regulations are "necessary for both of the following reasons":

- "To promote temperance and the public health and welfare."
- "To promote a stable 3-tier distribution system with orderly markets for wine and malt beverage products in which there is no price discrimination by a wholesaler in its sales to retailers within the wholesaler's sales territory."

#### Record-Keeping

The bill would require a vendor representative and salesperson of a vendor of spirits, manufacturer of beer or wine, outstate seller of beer or wine, or wholesaler to maintain accurate records of expenditures for each call on a retail license, keep those records for four years, and make them available for Commission inspection.

#### Promotional Purchase of Alcohol

The bill would allow a vendor representative or salesperson of spirits or wine, for promotional purposes, to purchase one drink for each customer of an on-premises licensee. A vendor representative or salesperson of a manufacturer of beer, a wholesaler of beer, or an outstate seller of beer, for promotional purposes, could purchase one drink for each customer of an on-premises retail licensee subject to a total spending limit of \$100 per day, and could not purchase a drink for customers more than twice per month at the same on-premises retail licensed location. A drink purchased under these provisions would have to be of the brand represented by the vendor representative or salesperson.

A licensee employed to deliver alcoholic liquor could not purchase a drink of alcoholic liquor for a retail licensee while on duty or in the course of employment.

MCL 436.1609 et al.

## **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

### **Supporting Argument**

The proposed amendments would benefit wholesalers, retailers, and consumers in Michigan, and would provide more flexibility under the Code. For example, the bill would codify the rule that allows a sales representative to buy drinks for customers, but would increase the daily limit from \$50 to \$100. The increased amount would be a cost covered by the manufacturer and allow it to better advertise its products to consumers. The proposed 90-day beer package price reduction change would provide greater pricing flexibility for manufacturers and wholesalers, as the current administrative rules require a price reduction to remain in effect for 180 days. Further changes under the bill would give manufacturers and wholesalers more advertising opportunities to better serve consumers.

Legislative Analyst: Drew Krogulecki

## **FISCAL IMPACT**

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

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.