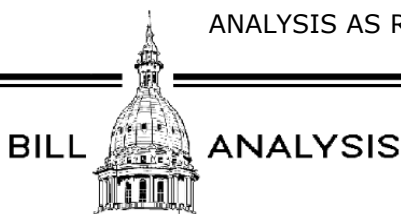




Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536



BILL ANALYSIS

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

Senate Bill 356 (Substitute S-1 as reported)
Sponsor: Senator Joe Hune
Committee: Regulatory Reform

Date Completed: 6-5-17

RATIONALE

The Liquor Control Commission's Vendor Representative and Salesperson Rules, in the Michigan Administrative Code, prohibit a vendor of spirits, manufacturer of beer or wine, outstate seller of beer or wine, or wholesaler from employing a person to sell, deliver, promote, or otherwise assist in the sale of alcoholic liquor in Michigan unless the person is licensed by the Michigan Liquor Control Commission as a vendor representative or salesperson. Some people believe that certain individuals, such as those who stock alcoholic products on retailer shelves, should be exempt from having to be licensed as a salesperson. It has been suggested that the salesperson licensing requirement should be codified in statute with some exceptions, and that a prospective salesperson should be required to successfully complete a salesperson accreditation program before he or she could be licensed.

CONTENT

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

- **Require the Michigan Liquor Control Commission to issue a salesperson license to an individual who met specified criteria.**
- **Prohibit an individual from selling, delivering, promoting, or assisting in the sale of alcoholic liquor in any manner to a retailer in the State unless licensed as a salesperson, subject to certain exceptions.**
- **Require a prospective salesperson to complete a salesperson accreditation program before the Commission could issue him or her a salesperson license.**
- **Require the Commission to approve a salesperson license accreditation program if it determined that the program's curriculum met specified criteria.**
- **Specify that a salesperson license would be valid for three years, beginning on the date it was issued or renewed.**

The bill would take effect 180 days after its enactment.

License Requirement; Exceptions

The bill would require the Commission to issue a salesperson license to an individual who had successfully completed a salesperson accreditation program and who was a designated employee of any of the following:

- A vendor of spirits.
- A broker.
- A manufacturer of beer or wine.
- An outstate seller of beer or wine.
- A wholesaler.

The Commission could not issue a salesperson license unless the applicant submitted with his or her application written documentation that the applicant successfully completed a salesperson accreditation program.

The bill would not require an individual to be licensed as a salesperson if he or she were at least 18 years of age and only did any of the following:

- Built a display of those brands that were represented or sold by the individual's employer for an off-premises retailer.
- Marked the price on those brands that were represented or sold by the individual's employer for an off-premises retailer.
- Rotated brands that were represented or sold by the individual's employer for an off-premises retailer.
- Placed brands that were represented or sold by the individual's employer on shelves for an off-premises retailer.
- Held a Michigan commercial driver license or chauffeur's license and transported, in a vehicle licensed by the Commission, and delivered alcoholic liquor to a retailer.

Accreditation Program

The Commission would have to approve a salesperson license accreditation program designed for salesperson licensees if the Commission determined that the program's curriculum included an understanding of all of the following:

- Section 609 of the Code (which prohibits specific individuals from aiding or assisting a vendor by gift or other valuables, but specifies particular items that may be provided to another licensee; and regulates brand logoed merchandise).
- Section 609a of the Code (which requires a manufacturer or wholesaler to file with the Commission a schedule of prices, and regulates beer package price reductions).
- Section 609b of the Code (which contains certain record-keeping requirements, and details promotional restrictions regarding the purchase of drinks for customers at on- or off-premises licensed locations).
- The provisions of Section 1013 of the Code that require the sale or purchase of alcoholic liquor by a licensee for cash only.
- R 436.1315 of the Michigan Administrative Code (which prohibits a manufacturer, an outstate seller of beer or wine, or a wholesaler from selling or furnishing to a retail licensee advertising or money or other valuables for advertising space).
- R 436.1319 of the Michigan Administrative Code (which requires cooperative advertising between certain entities, and specifies actions a manufacturer or an outstate seller of beer or wine may take in regard to advertising).
- R 436.1726 of the Michigan Administrative Code (which regulates the filing of price schedules with the Commission each year, among other things).
- The Commission's order for on-premises brand promotions issued October 27, 1999 (which contains provisions that wholesalers, manufacturers, outstate sellers, vendors of spirits, and brokers must comply with regarding on-premises brand promotions).
- The Commission's Administrative Order 2016-05 for product adjustments (which allows product adjustments made by wholesalers and manufacturers to be refunded for specified reasons, and governs exchanges of like products).

A person could apply to the Commission for qualification as an administrator for the offering of a salesperson accreditation program. ("Administrator" would mean a qualified trade organization authorized by the Commission to offer salesperson accreditation programs. "Qualified trade organization" would mean a trade organization that represents a vendor of spirits, a broker, a manufacturer of beer or wine, or outstate seller of beer or wine, or a wholesaler that employs individuals to act as salespersons.)

On approval of a salesperson accreditation program, the Commission would have to appoint the person sponsoring the program as administrator of that program.
Proposed MCL 436.1502

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

Not everyone involved in the sale, delivery, or promotion of alcohol, or otherwise involved in the alcohol industry, should be required to obtain a salesperson license. For example, the truck drivers who transport alcoholic products or individuals who place product on retailer shelves should not have to be licensed. Licensing more people than necessary is burdensome for the vendor of spirits, broker, manufacturer of beer or wine, outstate seller of beer or wine, and wholesaler that must license employees, and for the Commission. The bill would remove this burden by making appropriate exceptions to the codified licensure requirement. Also, through the accreditation requirements, the bill would create an industry-based standard training program to serve as the basis for licensure.

Opposing Argument

The bill's description of the organizations that could become an administrator (which could offer a salesperson accreditation program) is too narrow. Specifically, an accreditation program could be offered only by a "qualified trade organization". However, there are other organizations that have experience training individuals in subjects similar to those that would be required under the bill. The bill should allow a broader variety of organizations to become administrators, or allow administrators to contract the training duties to other organizations.

Opposing Argument

The proposed accreditation program is not necessary, and would create a burden for an interstate salesperson. Many large businesses and corporations already have orientation or training programs, making the accreditation program mandated under the bill redundant. Moreover, current licensing programs have been sufficient and should remain the employer's responsibility. If the provisions regarding the accreditation program remain in the bill, it should require the program to be developed under the guidance of a committee consisting of the largest trade organizations in the industry in the State. In addition, the bill should clarify that more than one administrator could be appointed.

Opposing Argument

Because the bill specifies that a salesperson license would be valid for three years, beginning on the date it was issued or renewed, the bill would create an administrative burden for the Commission due to the amount of time that would be required to review licenses that needed to be issued or renewed on a daily basis. The bill could minimize this burden by specifying a particular date when all salesperson licenses would expire.

Legislative Analyst: Drew Krogulecki

FISCAL IMPACT

The bill would not have a significant fiscal impact on the Michigan Liquor Control Commission (MLCC). The licensure of spirits salespersons is already MLCC practice; the bill would appear to generally codify this practice with some changes that would not seem to drastically change the amount of work or cost associated with licensure. Currently, applicants are charged a \$35 fee for

a new license, which is good for three years. In total, the program annually generates about \$100,000, which is used to offset the cost of licensure.

The bill would have no fiscal impact on local government.

Fiscal Analyst: Josh Sefton

SAS/A1718/s356a

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.