



Senate Fiscal Agency
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BILL ANALYSIS



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Senate Bill 356 (as enrolled)
Sponsor: Senator Joe Hune
Senate Committee: Regulatory Reform
House Committee: Regulatory Reform

Date Completed: 1-9-19

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 (R 436.1853). 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 issued under the bill after the bill's effective date but before April 30, 2020, would expire on that date, and that a salesperson license issued under the bill would be renewable every three years beginning May 1, 2020.**
- **Allow the Commission to charge a reasonable initial licensee fee and triennial renewal fee.**

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 was a designated employee of any of the following:

- A manufacturer of beer, wine, or mixed spirit drink.
- An outstate seller of beer, wine, or mixed spirit drink.

- A wholesaler.
- A broker that represented one or more people described above.
- A broker described above that also represented one or more of a vendor of spirits or a manufacturer of spirits.
- A vendor of spirits.
- A manufacturer of spirits.
- A broker that represented only one or more of a vendor of spirits or a manufacturer of spirits.

A salesperson license issued under the bill after the bill's effective date but before April 30, 2020, would expire on that date. A salesperson license issued under the bill would be renewable every three years with the first triennial renewal cycle beginning May 1, 2020. The Commission could charge a reasonable initial license fee and triennial renewal fee. The Commission would have to establish a fee by written order. The nonrefundable inspection fee under Section 529(4) of the Michigan Liquor Control Code would not be required for an application for a new salesperson license or transfer of a salesperson license.

(Section 529(4) of the Code provides for a nonrefundable inspection fee of \$70 to be paid to the Commission by an applicant or licensee at the time of filing any of the following:

- An application for a new license or permit.
- A request for approval of a transfer of ownership or location of a license.
- A request for approval to increase or decrease the size of the licensed premises, or to add a bar.
- A request for approval of the transfer in any licensing year of any of the shares of stock in a licensed corporation from one person to another, or any part of the total interest in a licensed limited partnership from one person to another.)

A salesperson license issued or renewed under R 436.1853 of the Michigan Administrative Code would expire on the earlier of the following dates:

- Three years after the date of the issuance or renewal.
- April 30, 2020.

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 Commission could not renew a salesperson license issued under the bill or under R 436.1853 of the Michigan Administrative Code unless the licensee submitted with his or her application proof acceptable to the Commission that the licensee had successfully completed a salesperson accreditation program no more than 120 days before the date the licensee submitted his or her renewal application.

The Commission could not impose any other requirement or consider any other factor beyond the accreditation required in the bill for issuance or renewal of a salesperson license.

An applicant's completion of a salesperson accreditation program would not be a condition for issuance or renewal of a salesperson license for any of the following applicants:

- A designated employee of a manufacturer of spirits.
- A designated employee of a vendor of spirits.
- A designated employee of a broker that represented only one or more of a vendor of spirits or manufacturer of spirits.

An individual could not sell, deliver, promote, or otherwise assist in the sale of alcoholic liquor in any manner to a retailer in Michigan unless licensed under the bill or under R 436.1853 of the Michigan Administrative Code. An individual licensed as a salesperson under R 436.1853 of the Michigan Administrative Code before the effective date of the bill would have to comply with the requirements of the bill on renewal of his or her salesperson license, application for a subsequent

salesperson license under a different employer, or a request to transfer is or her salesperson license to a different employer.

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.
- For an individual who held a Michigan commercial driver license or chauffeur's license, 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).
- Product adjustments as provided for under the Michigan Liquor Control Code.

A manufacturer of beer, wine, or mixed spirit drink; an outstate seller of beer, wine, or mixed spirit drink; or a wholesaler or qualified trade organization could apply to the Commission for qualification as an administrator for the offering of a salesperson accreditation program.

("Administrator" would mean a manufacturer of beer, wine, or mixed spirit drink; an outstate seller of beer, wine, or mixed spirit drink; or a wholesaler or qualified trade organization authorized by the Commission to offer salesperson accreditation programs. "Qualified trade organization" would mean a trade organization that represents a manufacturer of beer, wine, or mixed spirit drink; an outstate seller of beer, wine, or mixed spirit drink; 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 or qualified trade organization 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

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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.