

Legislative Analysis



MICHIGAN LIQUOR CONTROL CODE AMENDMENTS

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House Bill 6105 as enacted
Public Act 225 of 2022
Sponsor: Rep. Roger Hauck

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

House Bill 6106 as enacted
Public Act 226 of 2022
Sponsor: Rep. Richard M. Steenland

House Bill 6107 as enacted
Public Act 227 of 2022
Sponsor: Rep. Michele Hoyenga

House Committee: Regulatory Reform
Senate Committee: Regulatory Reform
Complete to 12-21-22

SUMMARY:

House Bills 6105, 6106, and 6107 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)
- Provide notification procedures regarding a beer, wine, or mixed spirit drink that a manufacturer has recalled or determined must be removed from a sales territory by the wholesaler. (HB 6105)
- 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)
- Allow a retailer or wholesaler to be refunded for mixed spirit drink that meets certain criteria. (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 amends an existing section of the code and adds four new sections. The bill adds mixed spirit drink to existing provisions in section 609c that relate to when a retailer is refunded for the cost of beer or wine that can no longer be sold by that retailer. New section 609g establishes the conditions under which the code applies to a wholesaler that sells nonalcoholic products to a retailer. New section 609h allows a manufacturer or retailer to offer

electronic rebate coupons to a retail customer after the customer makes a purchase of an alcoholic beverage. New section 609i requires that, if demand for a beer, wine, mixed wine drink, or mixed spirit drink exceeds supply, a manufacturer, supplier, or wholesaler must engage in commercially reasonable efforts to make that product available for purchase by a wholesaler or retailer that places an order. Finally, new section 609j provides notification procedures for when a manufacturer recalls a beer, wine, or mixed spirit drink or determines that it must be removed from a sales territory by the wholesaler..

Refunds to retailer or wholesaler

Under section 609c, a wholesaler or a manufacturer that sells directly to a retailer may refund to the retailer the amount the retailer paid for beer or wine, or replace the beer or wine, for any of the following reasons:

- The beer or wine is outdated.
- The beer or wine is defective.
- There was an error in the beer or wine delivered.
- The beer or wine may no longer be lawfully sold.
- The retailer's business is terminated.
- The formula, proof, label, or container of the beer or wine is changed.
- The beer or wine is discontinued.
- The retailer is only open a portion of the year and the beer or wine is likely to spoil during the off-season.

In addition, a manufacturer may refund to a wholesaler up to the amount the wholesaler paid for beer or wine, or replace the beer or wine, for either of the following reasons:

- The wholesaler provided a refund or replacement to a retailer as described above.
- The beer or wine has gone out of date while in the wholesaler's possession.

The bill amends the above provisions to allow mixed spirit drinks to be refunded or replaced under the same conditions.

Sale of nonalcoholic products by wholesaler

The bill provides 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 provides 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, which regulates gifts and other benefits made to a licensee by a manufacturer.

If a wholesaler separately owns or has a direct or indirect financial interest in a company, the wholesaler and the company may 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 allows 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 may 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 requiring 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

The bill provides that, if demand exceeds 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.

Notice of recall

Finally, the bill requires that if a manufacturer recalls a beer, wine, or mixed spirit drink, or determines that a wholesaler needs to remove one of those beverages from a sales territory, it must notify the MLCC and the affected wholesaler within two business days after the recall or determination. Within seven business days after the recall or determination, the manufacturer must provide the following information to the MLCC:

- The products recalled or to be removed and the number of cases of each product.
- The reason why each product was recalled or to be removed.
- The location where the affected product was manufactured.
- The areas of the state that are affected by the recall or removal.

Additionally, within seven business days after the recall or determination, the affected wholesaler must notify the MLCC when the removal and destruction of the affected product began and the expected completion date. The wholesaler also must notify the MLCC on the completion and destruction of an affected product. Within 30 days after a wholesaler removes and destroys an affected product, the manufacturer must reimburse the wholesaler for all costs reasonably associated with that removal or destruction.

MCL 436.1609c et seq.

House Bill 6106 allows a person licensed in the supplier tier to manufacture 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—although a microbrewer that sells 2,000 barrels of beer or less may self-distribute if it meets other criteria, as outlined in section 203a of the code.
- 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 (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 prohibits the MLCC from issuing a wholesaler license to a producer of nonalcoholic beverages or an entity the producer has a direct or indirect ownership or financial interest in if the producer 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 requires 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 must be filed by kind, type, size, and brand. A manufacturer or wholesaler also must file with the MLCC a price change for its market area before the effective date of that change. The price change must continue for at least two weeks after the effective date of the change. The net cash price and price change filings are exempt from disclosure under the Freedom of Information Act (FOIA) until one year after the filing was made.

The MLCC must periodically compare a manufacturer's or wholesaler's net cash price or change filing with the manufacturer's or wholesaler's tax filing.

A manufacturer or wholesaler cannot 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 must be at the same per unit rate, be nondiscriminatory, and not be based on a sliding scale. A manufacturer or wholesaler must file with the MLCC a split case fee charged under this provision.

Other changes

The bill allows 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 must 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 prohibits a manufacturer or wholesaler from selling wine, mixed wine drink, and mixed spirit drink at a quantity discount.

MCL 436.1609a (amended) and MCL 436.1609f (added)

The bills took effect October 14, 2022.

BRIEF DISCUSSION:

According to committee testimony, the bills address several areas of law that offer insufficient clarity for licensees in Michigan's three-tier system regulating the manufacture, distribution, and sale of alcoholic beverages. The bills also address situations where, in the view of the bills' proponents, additional regulation is needed to specifically address violations of the spirit of the law. Additionally, some of the bills update the 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.

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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.