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House Bill 6105 (Substitute H-1 as passed by the House)
House Bill 6106 (Substitute H-1 as passed by the House)
House Bill 6107 (Substitute H-2 as passed by the House)
Sponsor: Representative Roger Hauck (H.B. 6105)
Representative Richard M. Steenland (H.B. 6106)
Representative Michele Hoytenga (H.B. 6107)
House Committee: Regulatory Reform
Senate Committee: Regulatory Reform

Date Completed: 9-20-22

CONTENT

House Bill 6105 (H-1) would amend the Michigan Liquor Control Code to do the following:

- Specify that if a wholesaler sold nonalcoholic products to a retailer, the Code would not apply to the sale, marketing, merchandising, or distribution of the products only if certain requirements were met.
- Prescribe circumstances under which the Code would not apply to a company that sold nonalcoholic products.
- Allow a manufacturer or supplier to offer electronic rebate coupons directly to a retail customer after the retail customer purchased alcoholic liquor from a retailer.
- Specify that if demands exceeded supply for a beer, wine, mixed wine drink, or mixed spirit drink product, a manufacturer, supplier, or wholesaler would have to engage in commercially reasonable efforts to make the product available to purchase by a wholesaler or retailer that placed the order.

House Bill 6106 (H-1) would amend the Code to do the following:

- Allow a person licensed in the supplier tier to manufacture a private label of beer, wine, or mixed spirit drink for a retailer if the Michigan Liquor Control Commission (MLCC) determined that certain requirements were met.
- Prohibit the MLCC from issuing a wholesaler license to a producer of nonalcoholic beverages or an entity that the producer of nonalcoholic beverages had a direct or indirect ownership or financial interest in under certain circumstances.
- Modify the definition of "brand extension".

House Bill 6107 (H-2) would amend the Code to do the following:

- Require a manufacturer or wholesaler to file with the MLCC a schedule of net cash prices to retailers for all wine, mixed wine drinks, and mixed spirit drink by kind, type, size, and brand.

- **Require a manufacturer or wholesaler to file with the MLCC a wine, mixed wine drink, and mixed spirit drink price change for its market area before its effective date.**
- **Prohibit a manufacturer or wholesaler from charging a retailer a fee in addition to the net cash prices, except for a split case fee.**
- **Prohibit a manufacturer or wholesaler from selling wine, mixed wine drink, and mixed spirit drink at a quantity discount.**
- **Require the MLCC periodically to compare a manufacturer's or wholesaler's filing under the bill with the manufacturer's or wholesaler's tax filing.**
- **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.**

The bills are tie-barred.

House Bill 6105 (H-1)

Nonalcoholic Products

Under the bill, if a wholesaler sold nonalcoholic products to a retailer, the Code would not apply to the sale, marketing, merchandising, or distribution of the nonalcoholic products except the following:

- The wholesaler would have to comply with Section 609.
- The wholesaler could not provide free nonalcoholic products to a retailer or provide credit to a retailer.

(Section 609 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 MLCC, 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.)

If a wholesaler separately owned or had a direct or indirect financial interest in a company that sold nonalcoholic products, the Code would not apply to the company that sold nonalcoholic products if all of the following conditions were met:

- The company that sold nonalcoholic products was not a wholesaler.
- The company that sold nonalcoholic products and the wholesaler had separate sales and delivery employees.
- The company that sold nonalcoholic products and the wholesaler used separate delivery vehicles.
- The company that sold nonalcoholic products and the wholesaler kept separate finances.
- The company that sold nonalcoholic products did not engage in an activity on behalf of the wholesaler that would violate Section 609.

If a wholesaler separately owned or had a direct or indirect financial interest in a company that sold nonalcoholic products, the wholesaler and the company that sold nonalcoholic products 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 purchased alcoholic liquor from a retailer. An electronic rebate coupon would have to comply with all the following:

- A manufacturer or supplier could only issue coupons that stated a specific expiration date and specific cash refund value on the coupons; the refund could be paid by cash, by check, by debit card, through electronic funds transfer to a bank account, or through an internet or mobile payment account.
- A manufacturer or supplier could not issue coupons that resulted in the retail customer's purchase of alcoholic liquor being below the retailer's cost.
- A manufacturer or supplier could issue coupons that could be applied to more than one specific product sold by that manufacturer or supplier but would have to state the manufacturer or supplier to which they applied.
- A manufacturer or supplier would have to issue coupons that required the retail customer to purchase at least one product of alcoholic liquor to redeem a coupon; a manufacturer or supplier could issue coupons that required the retail customer to purchase two or more alcoholic liquor products from the same manufacturer or supplier to redeem the coupon.
- A manufacturer or supplier could not issue coupons that required the purchase of a product other than alcoholic liquor.
- A wholesaler could not pay for or participate in the offering of coupons except for providing signs that promoted the electronic rebate coupon in accordance with Section 610a.
- A manufacturer could only issue coupons that could be redeemable after a purchase of alcoholic liquor at all retail locations where that alcoholic liquor was sold.

Commercially Reasonable Efforts

Under the bill, if demands exceeded supply for a beer, wine, mixed wine drink, or mixed spirit drink product, a manufacturer, supplier, or wholesaler would have to do both of the following:

- 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 placed an order.
- Engage in commercially reasonable efforts to make the beer, wine, mixed wine drink, or mixed spirit drink product available to purchase by a retailer that placed the order.

House Bill 6106 (H-1)

Section 603 of the Code requires all liquor licenses in the State, except for warehouse, to be separated into three distinct and independent tiers composed of the following:

- Supplier tier, comprising suppliers.
- Wholesaler tier, comprising wholesalers.
- Retailer tier, comprising retailers.

Section 603 also generally prohibits a supplier, warehouse, or wholesaler from having an direct or indirect financial interests with any vendor, and prohibits a person from buying the

stocks of a supplier, warehouse, or wholesaler and placing the stock in any portfolio under an arrangement, written trust agreement, or form of investment trust agreement, issue participating shares based on the portfolio, trust agreement, or investment trust agreement, and sell the participating shares within the State.

Under the bill, a person licensed in the supplier tier could manufacture a private label of beer, wine, or mixed spirit drink for a retailer if the MLCC determined that all the following requirements were met:

- The supplier registers the private label with the MLCC as required under Administrative Rules 436.1611, 436.1719, and 436.1829.
- The supplier, independent of the retailer's involvement, appointed one or more wholesalers to distribute the private label as required under the Code, as applicable.
- The supplier complied with and did not violate Sections 305 or 403, as applicable.
- The wholesaler engaged in commercially reasonable efforts to make the private label available to a retailer that placed an order for the private label beer, wine, or mixed spirit drink.
- An appointed wholesaler remained the wholesaler for the private label and any brand extensions of the private label regardless of whether the retailer switched the supplier that manufactured the private label, unless the wholesaler was terminated under Sections 305 or 403, as applicable.

(Administrative Rules 436.1611, 436.1719, and 436.1829 prescribe certain labeling and registration requirements for the sale of beer, wine, and spirits, respectively, in the State. Section 305 of the Code provides a structure for the business relations between a wholesaler of wine or mixed spirit drink and a supplier of wine or mixed spirit drink. Section 403 provides a structure for the business relations between a wholesaler of beer and a supplier of beer.)

"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 Code defines "brand extension" as any brand that incorporates all or a substantial part of the unique features of a preexisting brand, of the same supplier. As used in this definition, "supplier" means a brewer, micro brewer, an outstate seller of beer, a wine maker, a small wine maker, an outstate seller of wine, a manufacturer of mixed wine drink, or an outstate seller of a mixed wine drink, a mixed spirit drink manufacturer, or an outstate seller of mixed spirit drink. Under the bill, "brand extension" would mean any brand that incorporates all or a substantial part of the unique features of a preexisting brand regardless of whether the extension is beer, wine, mixed wine drink, or mixed spirit drink. The bill would delete the definition of "supplier" as it applies to a "brand extension".

The MLCC could not issue a wholesaler license to a producer of nonalcoholic beverages or an entity that the producer of nonalcoholic beverages had a direct or indirect ownership or financial interest in, if the producer of nonalcoholic beverages or the entity the producer of nonalcoholic beverages had a direct or indirect ownership or financial interest in had a direct or indirect ownership or financial interest in a person licensed in the supplier tier.

House Bill 6107 (H-2)

MLCC Filings

The bill would amend the Code to require a manufacturer or wholesaler to file with the MLCC a schedule of the net cash prices to retailers for all wine, mixed wine drink, and mixed spirit drink by kind, type, size, and brand.

A manufacturer or wholesaler also would have to file with the MLCC a wine, mixed wine drink, and mixed spirit drink price change for its market area. The manufacturer or wholesaler would have to file the price change before its effective date. A price change would have to continue for at least two weeks after the effective date.

A manufacturer or wholesaler could not charge a retailer a fee in addition to the net cash prices, except for a split case fee. If a manufacturer or wholesaler charged a split case fee to a retailer, the fee would have to be at the same per unit rate, nondiscriminatory, and not be based on a sliding scale. A manufacturer or wholesaler would have to file with the MLCC a split case fee.

A manufacturer or wholesaler could not sell wine, mixed wine drink, and mixed spirit drink at a quantity discount.

A net cash price and a price change would be exempt from disclosure under Freedom of Information Act until one year after the net cash price or price reduction was filed, as applicable.

The MLCC periodically would have to compare a manufacturer's or wholesaler's filing under the bill with the manufacturer's or wholesaler's tax filing under Section 301.

Provision of Technology

Under the bill, notwithstanding Section 609, a manufacturer, outstate seller of beer, outstate seller of wine, or outstate seller of mixed spirit drink could provide a wholesaler with technology to assist in sales, marketing, delivery, merchandising, or training. A manufacturer, outstate seller of beer, outstate seller of wine, or outstate seller of mixed spirit drink that provided technology to a wholesaler would have to do both of the following:

- Comply with the Code, including Section 608, and the rules promulgated under the Code.
- Obtain approval by written order of the MLCC authorizing the technology before it was provided to a wholesaler.

(Section 608 governs the State's authority under the 21st Amendment to the United States Constitution regarding the distribution and sale of alcoholic beverages.)

Proposed MCL 436.1609g-436.1609i (H.B. 6105)
MCL 436.1105 & 436.1603 (H.B. 6106)
MCL 436.1609a et al. (H.B. 6107)

Legislative Analyst: Eleni Lionas

FISCAL IMPACT

The bills would have a limited fiscal impact on State and local government, mainly in the form of administrative costs to the Michigan Liquor Control Commission. These costs should not exceed current appropriations.

Fiscal Analyst: Jonah Houtz

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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.