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BILL ANALYSIS

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Senate Bill 625 (as introduced 6-22-05)

Sponsors: Senator Michelle A. McManus

Committee: Economic Development, Small Business and Regulatory Reform

Date Completed: 11-30-05

CONTENT

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

- Authorize the Liquor Control Commission to grant a direct shipper permit that would allow wine makers holding certain licenses to engage in the sale, delivery, or importation of wine to retail customers.**
- Make the retail sale, delivery, or importation of wine by mail order, internet, or other electronic means, subject to the criteria that presently apply to the sale, delivery, or importation of alcoholic liquor by those means; and require the retailer to have a direct shipper permit.**
- Limit the retail sale, delivery, or importation of wine by electronic means to 24 cases annually per retailer.**

The bill is tie-barred to Senate Bill 626 or House Bill 4988 (which would establish penalties for failing to comply with age verification and labeling requirements for direct shipment), Senate Bill 627 or House Bill 4989 (which would define "retail customer" in the Code), and Senate Bill 628 or House Bill 4990 (which would add several definitions to the Code).

(Under Senate Bill 628 and House Bill 4990, "direct shipper" would mean a person who engages in the sale, delivery, or importation of wine to a retail customer through the use of any mail order, internet, telephone, computer, device, or other electronic means.)

Direct Shipper Permit

Under the bill, a direct shipper could not engage in the sale, delivery, or importation of wine to a retail customer unless it applied for and was granted a direct shipper permit from the Commission. Only the following persons would qualify for the issuance of a direct shipper permit:

- A wine maker currently holding a wine maker license in the State.
- A wine maker located outside of the State and currently holding an outstate seller of wine license.
- A wine maker located outside of the State and not currently licensed as an outstate seller of wine but holding both a Federal basic permit issued by the Bureau of Alcohol, Tobacco, and Firearms and licensed to manufacture wine in its state of domicile.

An applicant for a direct shipper permit would have to submit an application to the Commission in a written or electronic format provided by the Commission, accompanied by an application fee of \$100 and an initial permit fee of \$100. If the application were denied,

the Commission would have to refund only the initial permit fee. The application also would have to be accompanied by a copy or other evidence of the existing Federal basic permit or license, or both, held by the applicant.

The direct shipper could renew its permit annually by submission of a \$100 permit renewal fee and a renewal application. The failure to renew or the revocation or suspension of the applicant's existing Michigan license, Federal basic permit, or license to manufacture wine in its state of domicile would be grounds for revocation or denial of the direct shipper permit.

The Commission would have to promulgate rules to provide for the quarterly reporting of all shipments made by direct shippers.

Sale, Delivery, or Importation of Wine

Under the Code, except as otherwise provided, a sale, delivery, or importation of alcoholic liquor, including alcoholic liquor for personal use, must not be made in the State unless the sale, delivery, or importation is made by the Liquor Control Commission, the Commission's authorized agent or distributor, an authorized distribution agent approved by order of the Commission, or a person licensed by the Commission, or by prior written order of the Commission.

For this purpose, the sale, delivery, or importation of alcoholic liquor includes, but is not limited to, the sale, delivery, or importation of alcoholic liquor transacted or caused to be transacted by means of any mail order, internet, telephone, computer device, or other electronic means. Subject certain restrictions, if a retail sale, delivery, or importation of alcoholic liquor occurs by any of these means, the retailer must comply with all of the following:

- Be appropriately licensed under the laws of the State.
- Pay any applicable taxes to the Commission.
- Comply with all prohibitions of the laws of the State including, but not limited to, sales to minors.
- Verify the age of the individual placing the order by obtaining from him or her an affirmation that he or she is of legal age to purchase alcoholic liquor.
- Upon request of the Commission, make available to it any document used to verify the age of the individual ordering the alcoholic liquor from the retail seller.
- Stamp, print, or label on the outside of the shipping container language that clearly establishes in a prominent fashion that the package contains alcoholic liquor and that the recipient at the time of delivery is required to provide identification verifying his or her age along with a signature.
- Place on the top panel of the shipping container a label containing the name and address of the individual placing the order and the name of the designated recipient, if any.

Also, the person receiving and accepting the order must record specified information about the person placing the order.

Under the bill, the sale, delivery, or importation of alcoholic liquor would include, but not be limited to, the sale, delivery, or importation of wine (rather than alcoholic liquor) transacted or caused to be transacted by means of any mail order, internet, telephone, computer, device or other electronic means. If a retail sale, delivery, or importation of wine occurred by any of these means, the person making the retail sale would have to comply with the criteria listed above. Instead of being appropriately licensed, however, a retailer would have to hold a direct shipper permit.

Under the bill, a person making a retail sale of wine by mail order, internet, etc., also would have to comply with the following:

- Ship not more than 24 cases of wine, containing not more than nine liters in total per case, annually to any retail customer.
- Report to the Commission quarterly the total amount of wine, by type, brand, and price, shipped to retail customers in the State during the preceding calendar year, and the names, addresses, and amount of wine ordered by and shipped to specific retail customers.
- Authorize and allow the Commission and the Department of Treasury to conduct an audit of the direct shipper's records, upon request.
- Consent and submit to the jurisdiction of the Commission, the Department of Treasury and the courts of the State concerning enforcement of the Code's shipping provisions and any related laws, rules, and regulations.

Under the Code, a person who is of legal age to purchase alcoholic liquor may do either of the following in relation to alcoholic liquor that contains less than 21% alcohol by volume:

- Personally transport from another State, once in a 24-hour period, not more than 312 ounces of alcoholic liquor for that person's personal use.
- Ship or import from another State alcoholic liquor for that person's personal use so long as that personal importation was done in compliance with the Code.

The bill provides, instead, that a person who was of legal age to purchase alcoholic liquor could personally transport from another state, once in a 24-hour period, not more than 312 ounces of wine for that person's personal use.

MCL 436.1203

Legislative Analyst: J.P. Finet

FISCAL IMPACT

The bill would allow the Liquor Control Commission to charge a \$100 application fee and a \$100 annual permit fee of any direct shipper. Additionally, the bill would increase the regulatory responsibilities of the Commission by requiring that audits be performed on these shippers to verify sales figures. The amount of revenue that would be generated from these new permit fees would depend on participation levels. This revenue would be used to offset the costs of carrying out the new responsibilities of the Commission to regulate these new permit holders.

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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.