Legislative Analysis

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BEER AND WINE: USE OF THIRD-PARTY FACILITATORS AND COMMON CARRIERS

Senate Bill 1088 (S-4) as passed by the Senate
Sponsor: Sen. Peter MacGregor
House Committee: Commerce and Trade
Senate Committee: Regulatory Reform
Complete to 11-30-16

SUMMARY:

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

Off-premise retailer could use third-party facilitator to sell and deliver beer and wine
The bill would allow a retailer that holds a specially designated merchant (SDM) license to use a third-party facilitator service by means of the internet or a mobile application to facilitate the sale of, or to deliver, beer or wine to the home or designated location of consumer, and allow a third party facilitator to deliver beer and wine to a consumer on behalf of the SDM if it verified that the individual accepting delivery was at least 21 years old, and other conditions were met. The facilitator would have to offer services for all brands available at the retail location. An SDM license allows the sale of beer and wine for off-premises consumption.

A third-party facilitator would have to obtain a facilitator license from the Liquor Control Commission (LCC); the commission could establish initial and renewal license fees by written order.

A manufacturer, warehouse, wholesaler, outstate seller of beer, or outstate seller of wine could not have a direct interest in a third-party facilitator and could not aid or assist a facilitator by a gift, loan of money, property, or other valuable things (as defined in the Code).

If a third party delivery service violated the bill's provisions, the LCC could not treat the delivery service's violation as a violation by the retailer that used the delivery service.

Off-premised retailer could use common carrier to deliver wine
The bill would allow a retailer that holds an SDM license to use a common carrier to deliver wine to a consumer in the State by mail order, telephone, or electronic means, if the retailer verified that the individual placing the order was at least 21, the container met detailed labeling requirements, and other conditions were met. A retailer using a common carrier would have to pay all applicable taxes to the LCC and the Department of Treasury.

Reporting requirements for common carriers and third-party facilitator services
The bill establishes reporting and record keeping requirements for common carriers and third-part facilitators. Each would have to submit quarterly reports providing specified

information about each delivery to a consumer in the preceding calendar quarterly, including the name and address of shippers and recipients; weight of the product delivered; and the date of deliver. The reports would be subject to the Freedom of Information Act.

Both kinds of entity would have to maintain books, records, and documents supporting a report for three years, unless the commission provides written notification that they may be destroyed. They would be subject to inspection by the LCC and local law enforcement within 30 days of a request.

Out-of-state retailer provision would be deleted

The bill would delete provisions that allow an out-of-state retailer that holds a license substantially equivalent to a Michigan SDM license to use a third party that delivers beer or wine to a consumer's home, or other designated location, in municipalities surrounded by water. A Michigan SDM could continue to do this.

FISCAL IMPACT:

Senate Bill 1088 would have an indeterminate, though likely neutral, fiscal impact on the Department of Licensing and Regulatory Affairs. The bill would require the Michigan Liquor Control Commission to develop a licensing process for third party facilitators, who would be able to deliver beer and wine for specially designated merchants. The bill would allow the MLCC to charge an application fee, an initial license fee, and an annual license renewal fee for licensure as a third party facilitator. These fees would likely be set at a level such that expenditures by the department would be offset by fee revenues. The bill would also require that any applicable taxes be paid to the MLCC and the Department of Treasury by common carriers delivering wine for specially designated merchants. The bill would not result in fiscal impacts for other units of state or local government.

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