

## LIQUOR SALESPERSON LICENSE

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**Senate Bill 356 reported by House committee as Substitute H-1**

**Sponsor: Sen. Joe Hune**

**House Committee: Regulatory Reform**

**Senate Committee: Regulatory Reform**

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

**Complete to (9-18-17)**

**BRIEF SUMMARY:** Senate Bill 356 would require a person employed by certain licensed beer and wine vendors to hold a salesperson license before selling, delivering, promoting, or otherwise assisting in the sale of beer or wine in any manner to a Michigan retailer. The bill would also require completion of a salesperson accreditation program before licensure, provide exemptions from licensure, and specify criteria for a salesperson accreditation program.

**FISCAL IMPACT:** Senate Bill 356 would not likely have a significant fiscal impact on the Department of Licensing and Regulatory Affairs, as the Department already issues salesperson licenses. The bill is not expected to have a significant fiscal impact on any other units of state or local government.

### ***THE APPARENT PROBLEM:***

Currently, before a person can be employed by a vendor of spirits, manufacturer of beer or of wine, outstate seller of beer or of wine, or wholesaler he or she must obtain a salesperson license under rules promulgated by the Michigan Liquor Control Commission. The commission has authority to set the license fee by written order and licenses are valid for three years. Some believe that the requirement for a salesperson license should be codified within the Michigan Liquor Control Code. Further, it has been suggested that the codification clarify that certain people, such as those who merely stock beer and wine products or who drive the delivery trucks should not have to be licensed as a salesperson. Legislation has been offered to address these and other concerns.

### ***THE CONTENT OF THE BILL:***

The bill would add a new section to the Michigan Liquor Control Code that would prohibit an individual from selling, delivering, promoting, or otherwise assisting in the sale of beer or wine to a Michigan retailer unless licensed under the bill.

(Though the bill would not create a specific penalty for engaging in the prohibited acts without a license, Section 909 of the Code makes it a felony punishable by imprisonment for up to one year and/or a fine of not more than \$1,000 for performing any act for which a license is required without first obtaining that license.)

### Salesperson license

Under the bill, an individual who sells, delivers, promotes, or otherwise assists in the sale of beer or wine in any manner to a Michigan retailer must obtain a salesperson license before engaging in such activities. The Michigan Liquor Control Commission (LCC) would be required to issue a salesperson license to an individual who has successfully completed a salesperson accreditation program and who is a designated employee (meaning an individual who sells, delivers, promotes, or otherwise assists in the sale of beer or wine) of any of the following:

- A manufacturer of beer or of wine, or an outstate seller of beer or of wine.
- A wholesaler.

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

A license could not be issued unless the applicant submitted documentation with the application verifying successful completion of a salesperson accreditation program. Similarly, a salesperson license would not be renewed unless the licensee submits—along with the application—proof acceptable to the LCC that he or she has successfully completed a salesperson accreditation program no more than 120 days before submission of the renewal application.

### Exemptions from licensure as a salesperson

An individual at least 18 years of age and who only does any of the following would not be required to be licensed as a salesperson:

- For brands that are represented or sold by the individual's employer for an off-premises retailer:
  - Builds a display of the brands;
  - Marks the price on those brands;
  - Rotates the brands; or,
  - Places the brands on shelves.
- Transports, in a vehicle licensed by the LCC under Section 525 of the code, and delivers alcoholic liquor to a retailer (the person must hold a Michigan commercial driver license).

Currently, a person may be licensed as a salesperson under departmental rules (R 436.1853). If a person were so licensed prior to the bill's effective date, the person must comply with the bill's requirements on renewal of his or her salesperson license, application for a subsequent salesperson license under a different employer, or a request to transfer his or her salesperson license to a different employer.

#### Accreditation program

An accreditation program must be approved by the commission if it determines that the program's curriculum includes an understanding of specific provisions within the code and the Michigan Administrative Code, the commission's order for on-premises brand promotions issued October 27, 1999, and product adjustments as provided for under the Code. "Salesperson accreditation program" would mean a program approved by the LCC and that is offered by an administrator.

A person (i.e., manufacturer of beer or wine, outstate seller of beer or wine, or a wholesaler), or a qualified trade association, could apply to the LCC for qualification as an administrator to offer a salesperson accreditation program. On approval of a program, the commission must appoint the person or qualified trade association sponsoring the program as administrator of that program. "*Qualified trade association*" would be defined to mean a trade association representing a manufacturer of beer or wine, outstate seller of beer or wine, or a wholesaler that employs individuals to act as salespersons.

The bill will take effect 90 days after enactment.

MCL 436.1502, proposed

#### ***HOUSE COMMITTEE ACTION:***

The House committee adopted a substitute bill that would limit licensure under the act to designated employees who sell, deliver, promote, or otherwise assist in the sale of beer or wine (rather than "alcoholic liquor"). The H-1 Substitute also would revise dates by which a license would be renewed, allow the LCC to charge an initial license fee and triennial renewal fee, and exclude the nonrefundable inspection fee under Section 529(4) for a new or transferred salesperson license.

#### ***ARGUMENTS:***

##### ***For:***

The bill addresses several concerns raised by members of the liquor industry. First, the bill would place the salesperson license for those selling, promoting, or delivering beer or wine to licensed retailers in the state within the liquor code. It would keep the three-year license cycle, and ease the administrative burden on the Michigan Liquor Control Commission by specifying a particular date for the renewals rather than having a rolling renewal period. It also would exclude certain persons who technically deliver or assist in the sale of beer or wine to a retailer but who play an ancillary role, such as a delivery driver or person who stocks the shelves in a party store.

The bill would shift the burden of who provides the training for a person seeking a salesperson license for activities involving beer or wine. Instead of the employer or other entity providing such training, the commission would have to approve a particular training program; only those meeting certain curriculum criteria would be approved. However, the

bill appears to still allow employers and trade associations to offer programs (if the program received commission approval).

Under the bill, a person seeking a license renewal would have to undergo the training again. According to industry members, liquor laws often change, even just in the span of a person's license period. Requiring completion of an accreditation program every three years will ensure that those who sell, deliver, promote, or assist in the sale of beer and wine to licensed retailers in the state (e.g., bars, restaurants, package stores, and grocery stores) will be knowledgeable regarding the latest in liquor-related laws and commission orders.

***Against:***

No arguments were offered in committee testimony in opposition to the bill.

***POSITIONS:***

A representative of the Michigan Beer and Wine Wholesalers Association testified in support of the bill. (9-6-17)

The Michigan Spirits Association indicated a neutral position on the bill as passed by the Senate. (9-6-17)

The Michigan Liquor Control Commission indicated it has not taken a position on the bill. (9-16-17)

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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.