

REFUND/REPLACEMENT OF BEER & WINE

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Senate Bill 357 as reported by House committee

Sponsor: Sen. Rebekah Warren

House Committee: Regulatory Reform

Senate Committee: Regulatory Reform

Complete to 9-15-17

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

(Enacted as Public Act 130 of 2017)

BRIEF SUMMARY: The bill would allow certain micro brewers, which sell directly to licensed retailers, and wholesalers to provide refunds or product replacements to retailers for beer and wine under certain conditions.

FISCAL IMPACT: The bill would have no fiscal implications for state or local units of government.

THE APPARENT PROBLEM:

Sometimes, a delivery person makes a mistake and delivers the wrong brand of beer or wine to a liquor store or restaurant. Perhaps a manufacturer found that a product must be recalled because of an off-taste or sediment in the product. When such things happen, establishments licensed to sell liquor for on- or off-premises consumption must look to departmental rules and an order issued by the Michigan Liquor Control Commission to see if they qualify for a refund or for a replacement of like product on a one-for-one basis. Some would like to see these rules and the order that provide for refunds or product exchanges for beer and wine placed in statute (a process known as "codification").

In addition, the pertinent commission order, Administrative Order No. 2016-05, allows Michigan beer wholesalers to exchange like products with retail licensees on a one-for-one basis if the beer product is nearing the out-of-date code, but prohibits the wholesalers from giving cash or credit refunds to the licensed retailers for those products. Some would like this provision changed to allow wholesalers to provide refunds in the form of cash or credit, instead of product replacements, for beer nearing its expiration date. Further, it has been suggested that the refunds be limited to beer within 30 days of its out-of-date code.

THE CONTENT OF THE BILL:

Senate Bill 357 would add a new section to the Michigan Liquor Control Code to allow a manufacturer that sells directly to a retailer under Section 203(19) or a wholesaler to refund to a retailer the amount the retailer paid for beer or wine, as applicable, or would allow the manufacturer or wholesaler to replace that beer or wine for any of the following reasons:

- The beer or wine is outdated or defective.
- The beer or wine delivered is in error.
- The beer or wine may no longer be lawfully sold.
- The retailer's business has been 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.

[Section 203(19) allows a qualified micro brewer, or a substantially equivalent out-of-state entity, to sell and deliver beer to a retailer in Michigan if certain conditions are met. "[Retailer](#)" is defined in the code to mean a person licensed by the commission who sells to the consumer in accordance with rules promulgated by the commission. The term includes a brewpub but does not include a manufacturer or supplier, as defined in section 603, that is allowed as a condition of its license to sell to consumers in this state.]

Further, if beer is within 30 days of its out-of-date code, the manufacturer (micro brewer) or the wholesaler could refund the amount the retailer paid for the beer. A refund or replacement under the bill could only be issued for beer or wine that the manufacturer or wholesaler sold to the retailer.

The bill would take effect 90 days after enactment.

MCL 436.1609, proposed

HOUSE COMMITTEE ACTION:

The bill was not amended by the House committee.

BACKGROUND INFORMATION:

Under departmental rules, the Michigan Liquor Control Commission (LCC) has authority to authorize, by written order, certain product adjustments for beer and wine. Administrative Order 2016-05 allows product adjustments made by wholesalers and manufacturers to be by refund in the amount a licensed retailer paid for the product or by a product replacement of like product on a one-for-one basis, for certain listed reasons. Under the administrative order, beer products nearing their out-of-date codes may also be exchanged by beer wholesalers with like products on a one-for-one basis; however, wholesalers are currently prohibited from making product adjustments in the form of cash or credit refunds on beer products nearing out-of-date codes. Essentially, Senate Bill 357 would make changes to Administrative Order 2016-05 and then would codify the order.

ARGUMENTS:

For:

Currently, departmental rules and an order issued by the Michigan Liquor Control Commission allow licensed retailers to get a refund or exchange beer and wine products for certain listed occurrences, such as delivery errors, getting outdated products, going out of business, or having their license suspended or revoked. The commission order also allows beer wholesalers to exchange beer products on a one-for-one basis with like

products if the beer is nearing its out-of-date code. The bill makes some changes to what is currently provided in the departmental rules and the commission order, and then places the provisions in statute—thus giving the provisions the full weight of law.

First, the phrase "like product" would be eliminated. Since the phrase is not defined, there have been differing interpretations between retail licensees and manufacturers and wholesalers. For instance, if a case of red wine needs to be returned, some manufacturers or wholesalers may replace it with an identical case of wine. If that product is not selling well in that area, it does little good for the retailer to receive another case of the same product. In other instances, a wholesaler may replace the returned product with a similar, but different product. The changes made the bill simply allow a replacement of the beer or wine or a refund of the purchase price. The bill also simplifies the circumstances under which an exchange or refund may be given.

Regarding the provision in the commission order that a beer warehouser may exchange a beer product if the beer is "nearing" its out-of-date code, the bill would allow a refund to be made instead of a product exchange. The bill also clarifies that the refund may be made if the beer is within 30 days of its out-of-date code. This will resolve differences of opinion and interpretation of what "nearing" the code date means.

Against:

No arguments were offered in opposition to the bill.

POSITIONS:

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

The Michigan Retailers Association indicated on its website that it supports the bill. (posted 5/26/17)

The Michigan Liquor Control Commission indicated it did not take a position on the bill. (9-17-17)

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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.