

Legislative Analysis



ALLOW LIQUOR PROMOTION SIGNS

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Senate Bill 358 as reported by House committee

Sponsor: Sen. Rick Jones

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 131 of 2017)

BRIEF SUMMARY: The bill would allow certain licensed liquor vendors to provide a licensed retailer with signs that promote the brands and prices of alcoholic products, including special event pricing.

FISCAL IMPACT: The bill would not have fiscal implications for state or local units of government.

THE APPARENT PROBLEM:

Under departmental rules, liquor manufacturers, outstate sellers of beer or wine, vendors of spirits, and wholesalers may provide another liquor licensee with advertising items that promote the brands and prices of the beer, wine, or spirits that the entity produces, sells, or distributes. Some would like the ability also to provide signs or other items that advertise special event pricing, including for example, \$2 dollar draft beer during a game played by a professional or college sports team.

In another matter, departmental rules prohibit a retail licensee from displaying an illuminated sign advertising alcoholic products sold inside the licensed premises, though such illuminated signs can be displayed on the exterior of the building. The rule continues to be on the books despite a 2004 Michigan Attorney General Opinion (Op Atty Gen 7146) in which then Attorney General Mike Cox stated that to the extent the rule "prohibits illuminated advertising of alcoholic liquors inside certain licensed retail establishments", the bill violates the free speech protections afforded under both the U.S. Constitution and the Michigan Constitution.

Legislation has been offered to address these concerns.

THE CONTENT OF THE BILL:

Senate Bill 358 would add a new section to the Michigan Liquor Control Code to allow (with some restrictions) a manufacturer, mixed spirit drink manufacturer, warehouse, wholesaler, outstate seller of beer, outstate seller of mixed spirit drink, or vendor of spirits (hereinafter "listed entities") to provide a licensed retailer with signs that promote the brands and prices of alcoholic products, including special event pricing.

Under the bill, a sign:

- Must not be illuminated.
- Must not have any use beyond the actual advertising of brands, prices, and events related to the product.
- Must not include the name of the retailer.
- Must not be more than 3,500 square inches in dimension if located inside the retailer's licensed premises.

An illuminated sign could be used by a retailer to promote the brand, but not the price of an alcoholic product. The listed entities would be prohibited from providing such a sign to a retailer. Further, the signs allowed under the bill would be in addition to the advertising items that the listed entities are allowed to provide another licensee under Section 609(2) of the code. [Section 609(2) allows the listed entities—in a manner consistent with rules, regulations, and orders of the Michigan Liquor Control Commission—to provide another licensee with an advertising item that promotes 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. Except otherwise as provided, the advertising item cannot have any other use or value beyond the actual advertising of brands and prices of the alcoholic liquor.]

The bill would take effect 90 days after enactment.

MCL 436.1610a, proposed

HOUSE COMMITTEE ACTION:

No changes were made to the Senate-passed version of the bill.

ARGUMENTS:

For:

The bill addresses two concerns raised by the liquor industry. Currently, certain liquor vendors can provide licensed retailers with signs that advertise the price and brand of the product manufactured, sold, or distributed by that vendor. Senate Bill 358 would amend the statute, which has more weight than a departmental rule, also to allow a sign that advertised special event pricing. For example, a sign could offer a discounted price on a particular brand or product during Red Wings' games. Certain restrictions would still apply. Such a sign could not be illuminated or include the name of the licensed retailer (e.g., bar, store, or restaurant); would be limited in size; and couldn't have any use beyond advertising a brand, price, and event related to the liquor product.

Senate Bill 358 would also codify a 2004 attorney general opinion that found unconstitutional the current prohibition in departmental rules banning illuminated signs advertising a liquor product from being displayed inside a licensed retailer's premises. According to Opinion 7106, citing federal and state case law, illuminated advertising of the type prohibited by the departmental rules falls under a form of commercial speech that is constitutionally protected from unwarranted governmental regulation and, since the prohibition does not advance the "state's interest in promoting temperance and controlling

alcoholic beverage traffic in retail establishments," it does not meet the criteria for being "warranted regulation". Moreover, large venues such as sports arenas are allowed to have illuminated liquor signs. Though the bill would allow illuminated signs inside a bar, store, restaurant, or other licensed retailer to promote a particular brand of liquor, the sign could not include the price of the liquor.

POSITIONS:

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

The Michigan Alcohol Policy Promoting Health and Safety indicated opposition to the bill. (9-13-17)

The Michigan Liquor Control Commission indicated it has no position on the bill. (9-6-17)

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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.