

Legislative Analysis



UNLAWFUL IMPORT, SALE, OR DELIVERY OF BEER OR WINE

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 4556 (reported from committee w/o amendment)
House Bill 4557 (reported from committee as Substitute H-1)
Sponsor: Rep. Joseph N. Bellino, Jr.
Committee: Regulatory Reform
Complete to 5-24-17

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

(Enacted as Public Acts 86 and 87 of 2017)

BRIEF SUMMARY: The bills create a new civil sanction and criminal penalties for the unlawful sale, delivery, or importation of beer or wine whether by a licensee or a person not licensed by the Michigan Liquor Control Commission, and places a new felony penalty within the sentencing guidelines. Both bills would take effect 90 days after enactment.

FISCAL IMPACT: House Bill 4557 will have an indeterminate fiscal impact on the state and local governments. See *Fiscal Information* below for a detailed discussion.

THE APPARENT PROBLEM:

Reportedly, some unscrupulous beer and wine retailers are violating provisions in the Michigan Liquor Code that require them to make purchases and deliveries only through the state's three-tier system and instead use commercial shippers or others to deliver beer and wine purchased in other states to their establishments for sale to consumers. Such illegal sales enable the retailer to skirt state and federal taxes and thus keep a higher profit for themselves. Though illegal, it may occur because the penalty is too weak to deter would-be offenders. A liquor licensee faces only up to six months in jail and/or a fine of \$500 or less; up to 90 days in jail and/or \$500 or less in fines for a person not licensed under the Code. A similar violation involving spirits, on the other hand, can result in a four-year prison sentence. Some feel that if the penalty for the illegal purchase and transport of beer and wine across state lines was the same as for spirits, that the financial incentive to do so would disappear.

THE CONTENT OF THE BILLS:

Under the Michigan Liquor Control Code, only the Michigan Liquor Control Commission (MLCC) and certain persons licensed or authorized by the commission are allowed to sell, deliver, or import alcoholic beverages into the state, though individuals may bring a small amount into the state for their own personal use. Generally speaking, a violation of the provision is a misdemeanor offense, with a licensee subject to imprisonment for up to six months and/or a fine of not more than \$500. A person who is not licensed under the Code could receive up to 90 days in jail and/or a fine of not more than \$500 for a violation.

House Bill 4557 amends the Michigan Liquor Code (MCL 436.1909) to specify that a person, whether or not a licensee, would be subject to newly established penalties or sanctions for selling, delivering, or importing beer or wine in violation of Section 203(1).

"Person" would not include an air carrier, freight forwarder, or motor carrier as those terms are defined under federal law. Any of the following would trigger the penalties:

- ❖ A violation involving at least 225,000 milliliters would be a felony punishable by imprisonment for not more than four years and/or a fine of not more than \$5,000. (225,000ml equals three hundred 750-ml containers of wine or, at a conversion rate of 0.033814, about twenty-six cases of 12-ounce containers of beer)
- ❖ A violation involving at least 45,000 milliliters but less than 225,000 milliliters would be a misdemeanor punishable by imprisonment for not more than 93 days and/or a fine of not more than \$2,500. (45,000 ml equals sixty 750 ml containers of wine or about five cases of 12 ounce containers of beer.)
- ❖ A violation involving less than 45,000 milliliters would be a state civil infraction; the person could be ordered to pay a civil fine of not more than \$500.

[Section 203(1) prohibits, except as otherwise provided in the section and Section 301, a person from selling, delivering, or importing alcohol—including alcohol for personal use—unless the sale, delivery, or importation is made by the commission, the commission's authorized agent or distributor, an authorized distribution agent approved by order of the commission, a person licensed by the commission, or by prior written order of the commission. Section 301 authorizes the commission to levy and collect taxes on wine sold in the state.

Personal consumption: The bills do not change current laws allowing a small amount of alcohol to be brought into the state for a person's own use. Section 203(8) requires persons wishing to bring any type of alcoholic beverages in to the state for personal consumption to obtain prior written approval of the commission; an online application can be found on the MLCC's website. However, a person of legal age who has been outside the U.S. for at least 48 hours and who has not brought alcoholic beverages into the state during the past 30 days may bring in up to one liter without prior approval. A person of legal age may also bring in up to 312 ounces of alcoholic liquor that contains less than 21 percent alcohol by volume (about 24 twelve-ounce containers of beer or a dozen 750-ml containers of wine) from another state without prior approval by the commission.]

House Bill 4556 amends the Code of Criminal Procedure (MCL 777.14f). The bill specifies that the unauthorized sale, delivery, or importation of beer or wine would be a Class F felony against the public order with a maximum term of imprisonment of four years. The bill is tie-barred to House Bill 4557.

FISCAL INFORMATION:

Department of Licensing and Regulatory Affairs/MLCC

House Bills 4556 and 4557 would not have significant fiscal impacts on the revenues or expenditures of the Department of Licensing and Regulatory Affairs (LARA). The bills

would establish misdemeanors and felonies for persons that illegally sell, deliver, or import beer and wine into this state.

Department of Corrections

House Bill 4557 would have an indeterminate fiscal impact on the state and on local units of government. Information is not available on the number of persons that might be convicted under provisions of the bill. New felony convictions would result in increased costs related to state prisons and state probation supervision. In fiscal year 2016, the average cost of prison incarceration in a state facility was roughly \$36,000 per prisoner, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about \$3,500 per supervised offender in the same year. New misdemeanor convictions would increase costs related to county jails and/or local misdemeanor probation supervision. The costs of local incarceration in a county jail and local misdemeanor probation supervision vary by jurisdiction.

Civil infraction penalties would increase revenues going to the state Justice System Fund, which supports various justice-related endeavors in the judicial branch, and the Departments of State Police, Corrections, and Health and Human Services. Any increase in penal fine revenues would increase funding for local libraries, which are the constitutionally designated recipients of those revenues. Also, the bill would have an indeterminate fiscal impact on the judiciary and local court funding units. The fiscal impact would depend on how the provisions of the bill affected court caseloads and related administrative costs. House Bill 4556 amends sentencing guidelines and therefore does not have a direct fiscal impact on the state or on local units of government.

ARGUMENTS:

For:

The bills do not affect Michigan residents who are bringing in a favorite wine or case of beer from another state for their own use. It is aimed at licensed retailers who use commercial shippers, such as UPS or FedEx, to avoid paying Michigan taxes in an attempt to increase their own profits. Such conduct violates the Michigan Liquor Control Code, but the penalties are so weak that some say they are mere slaps on the wrist. Thus, House Bill 4557 would increase the penalty to mirror that in place for the illegal importation of spirits and would apply the same penalty to both licensees and those not licensed under the Code. The bill would not penalize commercial shippers operating under federal law because, since the packages most likely will not be marked that they contain alcohol, the commercial shippers would not know the contents of the packages.

Against:

No arguments in opposition to the bills were offered.

POSITIONS:

A representative of the Michigan Beer & Wine Wholesalers Association testified in support of the bills. (5-17-17)

The following entities indicated support for the bills on 5-17-17:

AFPD (Associated Food and Petroleum Dealers)

Great Lakes Wine & Spirits

Michigan Trucking Association

FedEx Corporation

UPS

The Michigan Liquor Control Commission did not take a position on the bills.

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Marcus Coffin
Robin Risko

■ 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.