



Senate Fiscal Agency
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BILL



ANALYSIS

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Senate Bill 357 (Substitute S-2 as passed by the Senate)
Sponsor: Senator Rebekah Warren
Committee: Regulatory Reform

Date Completed: 7-11-17

RATIONALE

In 2016, the Michigan Liquor Control Commission issued an administrative order that permits beer and wine wholesalers and manufacturers to replace products or give refunds to retailers under certain circumstances. Specifically, Administrative Order No. 2016-05 allows product adjustments made by wholesalers and manufacturers to be by refund in the amount paid for the product by a retail licensee or replacement of like product on a one-for-one basis for several reasons, such as outdated product, a seasonal closing of a retail licensee, or a driver or salesperson delivery error. Apparently, the Administrative Order's provisions could be modified in a way that would help streamline Michigan's current liquor distribution system. For that purpose, and to conform to similar laws or rules implemented by surrounding states, it has been suggested that the Administrative Order be codified with alterations.

CONTENT

The bill would amend the Michigan Liquor Control Code to allow a manufacturer that sold direct to a retailer as provided under Section 203(19) or a wholesaler to refund to a retailer the amount the retailer paid for beer or wine, as applicable, or allow such a manufacturer or a wholesaler to replace that beer or wine for any of the following reasons:

- The beer or wine was outdated.
- The beer or wine was defective.
- There was an error in the beer or wine delivered.
- The beer or wine could no longer be lawfully sold.
- The retailer's business terminated.
- The formula, proof, label, or container of the beer or wine was changed.
- The beer or wine was discontinued.
- The retailer was open only a portion of the year and the beer or wine was likely to spoil during the off-season.

If the beer were within 30 days of its out-of-date code, a manufacturer that sold direct to a retailer or a wholesaler could refund to a retailer the amount it paid for the beer.

A manufacturer that sold direct to a retailer or a wholesaler could issue a refund or replacement under these provisions only for beer or wine that the manufacturer or wholesaler sold to the retailer.

(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 the State if certain conditions are met.)

The bill would take effect 90 days after its enactment.

Proposed MCL 436.1609c

BACKGROUND

On November 30, 2016, the Michigan Liquor Control Commission issued Administrative Order No. 2016-05 pursuant to administrative rules that authorize the Commission, by a written order, to provide for product adjustments on beer and wine. Specifically, R 436.1633 provides that a refund or other adjustment on beer containers may not be made to a retail licensee by a manufacturer or wholesaler unless 1) a keg of beer shows evidence of leakage; 2) a keg of beer is flat or not salable at the time of tapping; or 3) other reasonable grounds for a refund or adjustment are approved by written order of the Commission. Under R 436.1735(4), bottled wine or wine containers may not be returned to a wholesaler or manufacturer, except as provided by written order of the Commission. (This language previously was found in R 436.1735(5), the rule cited by the Administrative Order.)

Under Administrative Order No. 2016-05, product adjustments made by wholesalers and manufacturers may be by refund in the amount paid for the product by the retail licensee or product replacement of like product on a one-for-one basis under the administrative rules, for the following reasons:

- Outdated product.
- The seasonal closing of the retail licensee.
- The retail licensee going out of business or placing its license in escrow.
- A driver/salesperson delivery error.
- An order error by the retail licensee.
- Discontinuance of a brand by a supplier.
- A license suspension or revocation.
- A short fill.
- Off taste, off color, sediment in the product, adulterated product, contaminated product, or spoiled product.
- Breakers or leakers at the time of delivery.
- IRS or Michigan Department of Treasury seizure.
- Saleable product not used by a Special licensee.

The order also permits Michigan beer wholesalers to exchange like products with retail licensees on a one-for-one basis, for beer products nearing out-of-date code. However, wholesalers are strictly prohibited from making adjustments in the form of cash or credit refunds on beer products nearing out-of-date code. These adjustments are limited to product exchanges of like products on a one-for-one basis.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The bill would codify Administrative Order 2016-05 with changes and additional details, such as allowing a refund of beer that was within 30 days of its out-of-date code and otherwise adjusting the reasons for which a refund or replacement of a product may occur. This would clarify and simplify current manufacturing and distribution practices, and bring Michigan law into conformity with the laws or rules of surrounding states.

Legislative Analyst: Drew Krogulecki

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Josh Sefton

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.