Senate Fiscal Agency
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BILL ANALYSIS

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Senate Bills 731 and 732 (Substitute S-2 as passed by the Senate)
Sponsor: Senator Roger Hauck (S.B. 731)
Senator Paul Wojno (S.B. 732)
Committee: Regulatory Affairs

Date Completed: 9-13-24

RATIONALE

According to testimony before the Senate Committee on Regulatory Affairs, an increasing number of incidents have been reported of retailers' payments to wholesalers "bouncing", or temporarily being dishonored by banks, as a regular part of doing business. Dishonored payments can hurt a wholesaler's ability to remit tax payments to the State and can cost wholesalers for processing those transactions. Some have argued that the State should deter retailers from defaulting on payments, and so it has been suggested that retailers pay a fee for each dishonored payment and face licensing sanctions for repeated dishonored payments.

CONTENT

Senate Bill 731 (S-2) would amend the Liquor Control Code to prescribe administrative fees that a liquor retailer that made a dishonored payment to a wholesaler would have to pay to that wholesaler because of the dishonored payment.

Senate Bill 732 (S-2) would amend the Liquor Control Code to require the Liquor Control Commission to suspend the license of a liquor retailer for 14 days if the retailer had made six or more payments to a wholesaler that had been dishonored by a financial institution in violation of the Code on different dates in 12 consecutive months.

Senate Bill 731 (S-2)

Currently, a retailer is in violation of the Code and subject to penalties if the retailer or the retailer's clerk, servant, agent, or employee makes a payment to a wholesaler, the Liquor Control Commission, or the State by any means that has been dishonored by a financial institution for lack of sufficient funds.

Under the bill, a retailer would be in violation of the Code if the retailer or the retailer's clerk, servant, agent, or employee made a payment to a wholesaler by any means that had been dishonored by a financial institution *for any reason*.

A wholesaler would have to require a retailer that made a dishonored payment to the wholesaler to pay the wholesaler an administrative fee as follows:

-- For the first dishonored payment, $50.
-- For a second dishonored payment within 12 months of the first dishonored payment, $100.
-- For a third dishonored payment within 12 months of the first dishonored payment, $150.
-- For a fourth dishonored payment within 12 months of the first dishonored payment, $200.
-- For a fifth or any subsequent dishonored payment within 12 months of the first dishonored payment, $250.

MCL 436.1903b (S.B. 731); Proposed MCL 436.1804 (S.B. 732)

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.)

Opposing Argument

Struggling retailers may need the flexibility to make dishonored payments to wholesalers. According to testimony before the Senate Committee on Regulatory Affairs, struggling retailers make dishonored payments for a variety of reasons, such as cash flow issues, bank deposit timing, and unexpected expenses; however, making dishonored payments is not common practice because businesses are incentivized to maintain positive, working relationships with wholesalers to reduce errors in future deliveries. Testimony also indicates that the Commission issues fewer than 40 non-sufficient fund (NSF) violations statewide each month out of approximately 10,000 total liquor licenses in Michigan. The punitive requirements proposed by the bills would reduce retailers' financial stability while an adequate disincentive to stop dishonoring payments is already present in the beer, wine, and spirits industry. These requirements would establish a system where a business' license was temporarily revoked for six dishonored payments, resulting in a climate that would make it more difficult for businesses to pay their bills during periods of financial uncertainty.

Opposing Argument

If Senate Bill 732 (S-2) passed into law, it would likely reduce the number of liquor licenses in municipalities that were over quota for liquor licenses. According to testimony before the Senate Committee on Regulatory Affairs, in Michigan, if a liquor license is revoked and a municipality is over its maximum quota of licenses, that license is permanently revoked. Therefore, if a retailer made six dishonored payments and its liquor license was revoked, it would not be able to regain that license, permanently taking away its ability to sell alcohol.

Opposing Argument

Senate Bill 732 (S-2) would interfere with financing issues between two private parties. Instead of establishing punitive measures, the bill should establish a process that would allow these two private parties to settle a disagreement before the Commission temporarily revoked a liquor license and took away a retailer's ability to do business. Senate Bill 732 (S-2) should not be passed because it would allow the Commission to revoke a retailer's ability to make a profit because of a dispute between private parties.

Response: The Liquor Control Code requires suppliers and wholesalers to establish a wholesaler's service territory, in which a wholesaler has the exclusive right to sell a supplier's brand to licensed retailers.[1] Therefore, wholesalers do not have a choice whether they do business with a retailer, so many private choices that could be made by wholesalers in other industries are not present in the beer, wine, and spirits industries. Since wholesalers have no recourse if retailers dishonor payments, the current regulatory structure fails to disincentivize retailers who are bad actors from harming wholesalers and gaming the system to their benefit.

FISCAL IMPACT

Senate Bill 731 (S-2)

The bill would have an indeterminate positive fiscal impact on State government and no fiscal impact on local units of government. The impact would depend on the number of violations of the bill and the number of repeated violations within a single year. Fines paid for violations

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[1] MCL 436.1401, 436.1403, 436.1305, and 436.1307

of the bill would be deposited into the Liquor Control Enforcement and License Investigation Revolving Fund, which is expended for the enforcement of the Code.

Senate Bill 732 (S-2)

The bill would have an indeterminate positive fiscal impact on State government and no fiscal impact on local units of government. The impact would depend on the number of vendors that meet the criteria listed by the bill and the administrative fees assessed. Fines paid for violations of the bill would be deposited into the Liquor Control Enforcement and License Investigation Revolving Fund, which is expended for the enforcement of the Code.

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