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BILL ANALYSIS

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Senate Bill 88 (as passed by the Senate)
Sponsor: Senator Paul Wojno
Committee: Regulatory Affairs

Date Completed: 3-21-25

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.

CONTENT

The bill 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.

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

PREVIOUS LEGISLATION

(This section does not provide a comprehensive account of previous legislative efforts on this subject matter.)

The bill is similar to Senate Bill 732 of the 2023-2024 Legislative Session. Senate Bill 732 passed the Senate and was reported by the House Committee on Regulatory Reform but received no further action.

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 violations statewide each month out of approximately 10,000 total liquor licenses in Michigan. The penalties proposed by the bill would reduce retailers' financial stability while an adequate disincentive to stop dishonoring payments is already present in the beer, wine, and spirits industry. The bill could create a climate that made it more difficult for businesses to pay their bills during periods of financial uncertainty and so it should not be enacted.

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

The bill would have no fiscal impact on State or local units of government. The bill would prescribe new penalties for dishonored payments to wholesalers, payable to those wholesalers. Currently, the Act also allows the Liquor Control Commission to assess a penalty, payable to the Commission and deposited in the General Fund, for any violation of the Code, including dishonored payments to wholesalers. The penalty payable to the Commission is not changed.

Analyst: Nathan Leaman

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

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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.