Legislative Analysis

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ACTIONS PROHIBITED FOR MANUFACTURERS OF ALCOHOLIC BEVERAGES

House Bill 4960 as introduced
Sponsor: Rep. Rebekah Warren

House Bill 4961 as introduced
Sponsor: Rep. Beth Griffin

Committee: Regulatory Reform
Complete to 9-16-19

SUMMARY:

House Bill 4961 would amend the Michigan Liquor Control Code to prohibit manufacturers from requesting, requiring, or prohibiting certain actions of wholesalers, including the production of financial records. House Bill 4960 would define financial records.

House Bill 4961 states that the purpose of the proposed section is to exercise Michigan's authority under the 21st Amendment to the U.S. Constitution to ensure an orderly market for the distribution and sale of alcoholic beverages. The 21st Amendment may be better known as the amendment repealing "Prohibition," or the prohibition of the sale of alcohol that had been enacted in the 18th Amendment in 1919.

The bill declares Michigan's intent to provide access to its alcoholic beverage market to all licensed alcoholic beverage manufacturers by ensuring the independence of wholesalers to distribute brands of beer, wine, mixed spirit drinks, and mixed wine drinks of multiple manufacturers free from the interference or control of any one manufacturer.

Under the bill, a manufacturer could not do any of the following:

- Require a wholesaler to provide ***financial records*** related to the wholesaler's distribution of the brands manufactured or sold to it by another manufacturer, the compensation of the wholesaler's employees, or the wholesaler's business operations not directly related to the distribution of the brands manufactured or sold to the wholesaler by the manufacturer.
- Request a wholesaler to submit its financial records as a requirement for renewing or retaining an agreement.
- Require a wholesaler to spend a set amount of resources marketing or promoting the brands manufactured or sold to the wholesaler, based on certain sale records.
- Ship certain alcohol to a wholesaler that exceeds the order placed or forecast submitted.
- Prohibit a wholesaler from distributing the manufacturer's brands in vehicles with the markings or logos of other manufacturers' brands (or from distributing other manufacturers' brands in vehicles with the markings or logos of the manufacturer's brand).

- Require a distributor to pay for the development, installation, or use of reporting software owned or mandated by the manufacturer.
- Require a wholesaler to pay a fee or penalty for noncompliance with a manufacturer requirement.
- Set or attempt to set the rates of compensation for wholesaler employees, including incentives.
- Prohibit a wholesaler from utilizing any wholesaler-owned, -leased, or -controlled property or equipment to market, promote, deliver, or distribute the brands manufactured or sold by another manufacturer to the wholesaler.

Violation of any of these provisions could result in an order to pay a civil fine of up to $1,000 for a first violation, up to $2,000 for a second violation, and up to $5,000 for a third or subsequent violation.

House Bill 4961 is tie-barred to House Bill 4960, which means that it could not take effect unless HB 4960 were also enacted.

Proposed MCL 436.1608

House Bill 4960 would define ***financial records*** as any document or summary of information contained in a document, including electronic documents, that contains information about the financial activities or position of a person, including information about the assets, balance sheets, budgets, cash flow, earnings, revenue, expenditures, income, investments, losses, liabilities, payroll, profits, retained earnings, or taxes.

MCL 436.1107

FISCAL IMPACT:

House Bill 4960 would not have an appreciable direct fiscal impact on the Department of Licensing and Regulatory Affairs (LARA) or on other units of state or local government.

House Bill 4961 would have an indeterminate fiscal impact on the state, which would depend on the number of manufacturers who violate provisions in the bill and are subsequently ordered to pay civil fines. Civil fines of up to $1,000 for a first offense, up to $2,000 for a second offense, and up to $5,000 for a third or subsequent offense could be ordered. Pursuant to provisions contained in the Michigan Liquor Control Code, revenue from civil fines would be required to be deposited with the state treasurer to be credited to the state general fund.

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