



**House  
Legislative  
Analysis  
Section**

Olds Plaza Building, 10th Floor  
Lansing, Michigan 48909  
Phone: 517/373-6466

## BEER/WINE BRAND EXTENSIONS

**House Bill 4223 (Substitute H-1)  
First Analysis (2-23-95)**

**Sponsor: Rep. Kirk A. Profit  
Committee: Regulatory Affairs**

### ***THE APPARENT PROBLEM:***

The Michigan Liquor Control Act specifies how manufacturers and outstate sellers of beer and wine are to grant sales territories to wholesalers. (An outstate seller is an entity licensed to sell beer or wine manufactured outside of the state to a wholesaler in this state.) A manufacturer or outstate seller of beer is required to grant a wholesaler an exclusive territory within which the wholesaler would be the exclusive distributor of the specified brand or brands of the manufacturer or outstate seller. If there is more than one brand of beer or malt beverage, exclusive territories can be granted to different wholesalers for the sale of the different brand or brands. For wine, wholesalers are granted a territory in which they can sell a specified brand or brands, but manufacturers or outstate sellers can grant the right to sell a specified brand or brands in a sales territory to more than one wholesaler. In either case, the sales territory is agreed upon between the wholesaler and manufacturer or outstate seller. (For mixed wine drinks and mixed spirit drinks, the territories are exclusive as with beer.)

When an industry is facing flat or declining sales, suppliers often flood the market with new brands and spin offs, or "brand extensions," of existing brands. For example, Michelob, by Anheuser-Busch Brewing Company, is recognized as a brand. An extension, or spin off, of that brand would be "Michelob Light," "Michelob Dark," "Michelob Dry," or "Michelob Ice." Reportedly, several breweries have, in recent years, assigned brand extensions to wholesalers who did not sell the original brand. The practice has caused confusion concerning the rights of beer wholesalers: breweries argue that each category of a brand is a different brand, while wholesalers maintain that "brand extensions" are merely categories of a brand. In response to this problem, the Michigan Liquor Control Act was amended by Public Act 275 of 1994 to specify that a "brand extension" assigned between January 1,

1994, and March 1, 1995 would not be considered a new or different brand, and must be assigned to the wholesale company that had first been granted the primary brand. Public Act 275 was enacted as a temporary solution that would allow manufacturers and wholesalers a period to negotiate an acceptable solution, while providing wholesalers with the protection during busy summer months. Subsequently, the Miller Brewing Company filed suit against the state (Miller Brewing Company and Capitol Beverage Co. Inc., doing business as Dan Henry Distributing Company v. Quality House Beverage, Inc. and the Michigan Liquor Control Commission). Miller alleges that the provisions of Public Act 275 violate Articles I, Sections 10 of both the state and the federal constitutions by impairing its ability to distribute brand extensions to wholesalers of its choice. Meanwhile, since the provisions of Public Act 275 will soon expire, legislation has been proposed that would extend its provisions until the issue is resolved in court.

### ***THE CONTENT OF THE BILL:***

Currently, the Michigan Liquor Control Act specifies that, between January 1, 1994, and March 1, 1995 a "brand extension" of beer, malt beverages, or wine must be assigned to the wholesaler who has been granted the exclusive right to sell the original brand. House Bill 4223 would amend the act to extend this provision to July 1, 1995.

MCL 436.30a and MCL 436.30d

### ***FISCAL IMPLICATIONS:***

According to the Michigan Liquor Control Commission (LCC), the bill would have some fiscal impact on the state. The cost would depend on the number of disputes that the LCC would have to investigate and resolve. (2-22-95)

House Bill 4223 (2-23-95)

**ARGUMENTS:*****For:***

The presumed legislative intent of Public Act 275 of 1994 was to provide a temporary protection for beer wholesalers until they and the breweries could negotiate a solution to the problem of "brand extensions." Under the act, a window period -- beginning January 1, 1994 and ending March 1, 1995 -- was provided, during which period a supplier who introduced a "brand extension" would be prevented from assigning the brand extension to any wholesaler other than the one to whom it had assigned the product's primary brand. However, the Miller Brewing Company has filed suit in federal court, charging that the provisions of Public Act 275 violate Articles I, Sections 10 of the state and federal constitutions. House Bill 4223 would extend the temporary solution provided under Public Act 275 of 1994 until July 1, 1995, at which time -- presumably -- the issue will have been resolved in court.

***POSITIONS:***

The Michigan Liquor Control Commission supports the bill. (2-22-95)

The Miller Brewing Company supports the bill. (2-22-95)

The Michigan Beer and Wine Wholesalers Association supports the bill. (2-22-95)

The Office of Attorney General has no position on the bill. (2-22-95)

The Anheuser-Busch Brewing Company has not yet taken a position on the bill. (2-22-95)