



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL



ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986

Senate Bill 240 (as enrolled)

PUBLIC ACT 343 of 1996

Sponsor: Senator Harry Gast

Senate Committee: Economic Development, International Trade and Regulatory Affairs

House Committee: Regulatory Affairs

Date Completed: 1-6-97

RATIONALE

Brandy is defined in Federal statute as "an alcoholic distillate from the fermented juice, mash, or wine of fruit... bottled at not less than 80% proof". Under the Michigan Liquor Control Act, brandy is considered to be a spirit. Since the alcohol content in wine amounts to only 15% to 16% through natural fermentation, wine makers often use brandy to "fortify" their products to achieve the legal maximum of 21% alcohol content for wine. Under Michigan law, only licensed wine manufacturers may be licensed to distill brandy. Since none of the State's wineries distilled brandy, wineries had to buy brandy from other states. Apparently, one reason the wineries did not distill brandy was that brandy distillation requires different equipment and a different manufacturing process from the wine-making process. Further, brandy distillation uses a lot of wine to make a little brandy. Reportedly, though, a few Michigan wine makers became interested in distilling brandy, primarily for use in fortifying their own wines. Since some brandy would produce more than what was needed for fortification, however, some claimed that it would be attractive financially to the wine maker if he or she were able to sell the excess brandy.

The Liquor Control Act provides for a three-tier distribution system for the sale of alcohol. In the case of spirits, the State buys the product from in-State or out-of-State manufacturers, sets a marked-up uniform price on the product, and then sells the liquor product to retailers such as package liquor stores. In the case of beer and wine, the manufacturer sells the product to distributors/wholesalers, who then sell the product to retailers. In the three-tier system, each tier is strictly prohibited from engaging in the activities of the other tiers. Therefore, manufacturers cannot also be retailers, retailers cannot be wholesalers,

and so forth. There are, however, several exceptions granted by the Act. Wine makers, for example, may sell their product directly to the public both at off-site tasting rooms and at restaurants located on the winery grounds.

Reportedly, the number of wineries expected to distill brandy was low and the amount of brandy to be distilled relatively small. Therefore, it apparently would not have been cost-effective for a brandy distiller to market a small amount of brandy through the State's three-tier distribution system. A brandy distiller physically would have had to move his or her product to the State warehouse in Lansing, only to buy it back from the State and move the product back to his or her own winery for use in the on-site restaurant. It was suggested, therefore, that wine makers be allowed to sell the excess brandy that they produce on their own premises.

CONTENT

The bill amended the Michigan Liquor Control Act to allow the Liquor Control Commission to approve a brandy manufacturer to sell at retail brandy that it manufactures, blends or rectifies, or both, at its licensed premises or at other premises authorized in the Act. The bill also allows the Commission to approve a brandy manufacturer to sell brandy made by the manufacturer in a restaurant for consumption on or off the premises if the restaurant is owned by the brandy manufacturer or operated by another person under an agreement approved by the Commission and is located on the premises where the brandy manufacturer is licensed. Brandy sold for consumption off the premises must be sold at the uniform price established by the Commission.

Previously, under the Act, a wine maker could sell wine in a restaurant for consumption on or off the premises if the restaurant was owned or leased to another person by the wine maker and located on the premises where the wine maker was licensed. The bill specifies, instead, that a wine maker may sell his or her wine in a restaurant for consumption on or off the premises if the restaurant is owned by the wine maker or operated by another person under an agreement approved by the Commission and is located on the licensed premises.

The bill also deleted from the conditions under which a wine maker may conduct wine tastings the provision that not more than one wine tasting location per wine maker could be approved by the Commission in a licensing year.

MCL 436.2m & 436.31

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 provides a sensible exception to the three-tier distribution system for spirits, making it possible for existing Michigan wine makers to enter the brandy distillation business. Since, under the Act, only a licensed wine maker may distill brandy, the bill will not result in an increase in liquor licenses. Further, the bill does not really expand the availability of alcohol since most of brandy produced will be used for fortification purposes or sold on-site at the winery. Reportedly, the amount of brandy to be produced will be relatively small. It makes sense, therefore, that a winery be allowed to sell its distilled brandy at its on-site restaurant along with the wine it produces. The bill's provisions are similar to those in the Michigan Liquor Control Act that allow microbreweries to sell the beer they brew directly to consumers for on- or off-premises consumption.

Supporting Argument

The distilling of fruit brandy will make good use of fruit crops that otherwise might go to waste. For instance, 1995's bumper cherry crop resulted in a decrease in cherry prices to the point that farmers felt that harvesting the cherries would cost more than letting them rot in the orchard. The bill will open up an additional market so that future bumper crops or substandard fruit unsuitable for other types of consumption can still be used, thus helping the State's fruit farmers and adding to the State's economy.

Opposing Argument

Michigan established a three-tier system of liquor distribution and other licensing requirements to limit the availability of alcohol and to protect against the unfair competition that could result if the tiers were allowed unchecked integration with each other. The relationship between alcohol consumption and crime, domestic problems, and interference with work is well documented. Each time an exception to the liquor laws is granted, the protections afforded by the Act are eroded, leaving society, families, and individuals more and more vulnerable.

Legislative Analyst: L. Burghardt

FISCAL IMPACT

The bill will have an indeterminate fiscal impact on the State of Michigan since brandy sales at an on-site retail establishment or concession will not be subject to current mark-up practices. Potentially, 13 brandy-producing wineries may sell brandy on-site, but the Liquor Control Commission previously indicated that only two producers were expected to sell brandy through these amendments to the Liquor Control Act. Actual fiscal impacts on the State will depend on the terms of any agreement entered into by the brandy producer and the Liquor Control Commission.

Fiscal Analyst: M. Tyszkiewicz

A9596\S240EA

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.