Legislative Analysis

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WINE MAKERS AND BREWERS OF BEER:
ALTERNATING PROPRIETOR OPERATIONS

Senate Bill 202 as passed by the Senate
Sponsor: Sen. Alan Sanborn
House Committee: Regulatory Reform
Senate Committee: Economic Development and Regulatory Reform

First Analysis (3-2-09)

BRIEF SUMMARY: The bill would allow the Michigan Liquor Control Commission to approve "alternative proprietors operations" involving wine makers or beer brewers and would allow liquor suppliers to have a direct or indirect interest in another supplier.

FISCAL IMPACT: The bill would have an indeterminate fiscal impact on the state and local units of government. Easing ownership restrictions on related entities would likely result in an increase in the number of businesses engaged in the manufacture of wine or beer. Under Section 525 of the Liquor Control Code, the license fee for the manufacture of beer is $50 per 1,000 barrels, up to $1,000, as well as a fee of $50 per vehicle used to deliver product to licensed retailers. The license fee for wine makers is $100 ($25 for wine makers who make less than 50,000 gallons). Under Section 543 of the Liquor Control Code, non-retail license revenue is credited to the Grape and Wine Industry Council.

THE APPARENT PROBLEM:

Craft beers and wines are growing in popularity with consumers. For example, in the last few years, the number of wineries in the state has topped 100, with interest continuing to grow. However, start-up costs for a winery or a brewery can be high. Under federal regulations, two or more wineries can be approved to share the use of portions of the same premises on an alternating basis. Known as "alternating proprietors," the wine company that controls the building acts as the "host" and the other wineries act as the "tenants." According to the federal Alcohol and Tobacco Tax and Trade Bureau, each winery is responsible for its own production, recordkeeping, reporting, labeling, and taxes and is completely independent of the others. The benefit to the host is that an existing manufacturer can utilize excess capacity, and the benefit to a tenant is that the new wine maker can enter the market with far lower start-up expenses. Similar regulations are in place for brewers.

In order for Michigan entrepreneurs to take advantage of alternating proprietor operations, state law needs to be amended. As written, the liquor laws currently prohibit such arrangements.

In a related matter, it is common in today's business climate for larger brewers or wine makers to absorb the operations of smaller brands. Technically, this is prohibited in

Michigan as the liquor code generally prohibits liquor licensees from having a direct or indirect financial interest in any other vendor's business. If the law were changed, large brewers could buy, produce, and market smaller craft beverages legally. In addition, allowing such relationships could allow two or more wine makers to partner together to produce wines, such as the stellar Opus One wine produced by the winery of the same name (co-founded by Robert Mondavi of Napa Valley, California and Baron Philippe de Rothschild of Château Mouton Rothschild of France).

THE CONTENT OF THE BILL:

The bill would allow the Michigan Liquor Control Commission to approve "alternating proprietor operations" involving wine makers or beer brewers.

The term "alternating proprietor operations" refers to arrangements in which two or more people take turns using the same physical premises and equipment to make wine or brew beer.

Specifically, the bill would amend the Liquor Control Code (MCL 436.1603) to allow the Liquor Control Commission to approve the following under R 436.1023(3) of the Administrative Code, subject to the written approval of the U.S. Department of Treasury, Bureau of Alcohol and Tobacco Tax and Trade:

- A wine maker participating with one or more wine makers in an alternating proprietor operation in accordance with federal regulations.
- A brewer participating with one or more brewers in an alternating proprietor operation in accordance with federal regulations.

In addition, the bill would specify that Section 603 of the code, which this provision would amend, would not prohibit a supplier from having any interest, directly or indirectly, in any other supplier. However, the bill would also specify that a manufacturer would be prohibited from having any interest, directly or indirectly, in a wholesaler. Further, the bill would prohibit a wine maker from collectively delivering wine, with any other wine maker, to a retail licensee.

Notwithstanding Section 109(1) of the code, "manufacturer" would mean a wine maker, small wine maker, brewer, micro brewer, manufacturer of spirits, small distiller, brandy manufacturer, and mixed spirit drink manufacturer.

"Supplier" would mean a manufacturer, mixed spirit drink manufacturer, outstate seller of beer, outstate seller of wine, outstate seller of mixed spirit drink, and vendor of spirits.

MCL 436.1603

HOUSE COMMITTEE ACTION:

The bill was not amended by the House committee.

BACKGROUND INFORMATION:

An amendment to the Michigan Liquor Control Code to permit alternating proprietor operations for beer and wine makers was included in Senate Bill 1558 last session. The bill died when the Senate failed to concur with a House-passed substitute. Among other things, that bill also would have allowed certain retirement centers to sell alcohol for consumption on the premises and would have created a "Sunday morning permit" to allow Sunday liquor sales by license retailers between 7 a.m. and noon.

ARGUMENTS:

For:

The bill does two things: (1) it would allow licensed suppliers, including wine makers and brewers, to have a direct or indirect interest in another supplier; and (2) it would allow wine makers and brewers to share wine making or brewing equipment and buildings with other wine makers and brewers under an alternating proprietor operation. Together, the amendments would have the following impact:

- Allow the Liquor Control Commission to implement a longstanding provision in the liquor code permitting farm mutual cooperative wineries. This provision has existed since the end of Prohibition, but needed the amending language before the commission could approve and license such a winery.
- Enable existing wineries and breweries to utilize excess capacity by renting portions of their licensed premises to new entrants to the wine or beer business on an alternating basis.
- Allow larger suppliers to acquire, produce, and market smaller brands. For instance, though large breweries, such as Anheuser Busch, have bought out small craft beer businesses and now manufacture and market those beers nationwide, it is technically illegal to sell those beers in the state.
- Open up the possibility for Michigan wineries of joint ventures with national and internationally known and respected wineries such as the Opus One Winery in California by permitting horizontal relationships between the same categories of licensees,.

The bill should not interfere with custom crush operations (where a customer approaches a winery to produce wine for that customer), as long as both parties adhere to state and federal licensing requirements. It also should not interfere with contract brewing arrangements, which differ from an alternating proprietor operation in that in the former case, the contract brewer has title to the ingredients and beer during all stages of production (title, or ownership, of the beer passing to the person on whose behalf the beer was brewed only after production, taxes paid, and the removal of the beer from the brewery). In an alternating proprietor operation, the host and tenant brewer hold title separately from each other regarding the ingredients, raw materials, and beer produced. (Information obtained from Industry Circular Number 2005-2 issued by the federal Alcohol and Tobacco Tax and Trade Bureau.)

The changes will allow wine makers, brewers, and manufacturers of other alcohol products to conduct their businesses more efficiently and economically, enable more small businesses to enter the market, and enable businesses located in the state to compete on a more level playing field with others in their market.

POSITIONS:

The Michigan Liquor Control Commission supports the bill. (2-27-09)

A representative of Wine Michigan testified in support of the bill. (2-25-09)

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