

DISTRIBUTION OF WINE

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House Bill 6224

Sponsor: Rep. Andrew Kandrevas

Committee: Regulatory Reform

Complete to 8-25-10

A SUMMARY OF HOUSE BILL 6224 AS INTRODUCED 5-27-10

Generally speaking, the Liquor Control Code allows wine suppliers to select more than one wholesaler to sell and distribute their product within a specific region of the state. This policy – often referred to as "dualing" – differs from the sale of beer and spirits where there is essentially one distributor within a region who is authorized by the manufacturer to sell a particular brand within that region. The bill would amend two sections of the Liquor Control Code to institute a policy of exclusive territories that would, with some exceptions, require wine suppliers to select only one wholesaler of their product in a specified region. (The term "wine supplier" in this summary refers to a manufacturer, outstate seller of wine, or master distributor.)

The following describes the bill in detail.

Section 307 – Multiple Wine Wholesalers per Brand

This section permits wine suppliers to grant to each of its wholesalers a particular sales territory allowing the wine wholesaler to act as the distributor of specific brands of the wine supplier. This section specifically permits wine suppliers to select more than one wine wholesaler per brand within a sales territory. (This section, in effect, currently allows "dualing.")

The bill provides that, beginning June 1, 2010, a wine supplier (i.e. a manufacturer, outstate seller of wine, or master distributor) would be prohibited from granting the right to sell a specified brand of wine in a sales territory to more than one wine wholesaler. Similarly, a master distributor could not itself distribute a brand in the same sales territory where the distributor granted the right to distribute a brand in that sales territory to another wine wholesaler.

The bill would grandfather existing dualing agreements of wine suppliers that were in effect on June 1, 2010, and allow such agreements to be continued or renewed. Additionally, the bill would permit wine wholesalers to sell or transfer their distribution rights for a brand to another wine wholesaler if the selling/transferring wholesaler (or a predecessor) had the right to distribute that brand and was actively selling that brand as of June 1, 2010, or if the selling/transferring wholesaler was acting as a master distributor as of June 1, 2010. (The bill would define a "master distributor" in Section 307 to mean a wholesaler that acts in the same or similar capacity as a wine maker, wine manufacturer,

or outstate seller of wine for a brand to other wholesalers on a regular basis in the normal course of business.)

Section 205(3) – Authorized Distribution Agents as Wine Wholesalers

The bill would delete a provision in this subsection which prohibits an authorized distribution agent or ADA (a distributors of spirits) who becomes a wine wholesaler from selling or distributing a brand of wine to retailers within a region in which another wholesaler has already been assigned or authorized to sell or distribute that brand of wine by the wine supplier. This prohibition against dualing, however, does not apply to an ADA who was selling that particular brand in that region on or before September 24, 1996. This provision was added to the Liquor Control Code with the enactment of 1996 PA 40 (SB 1171), which largely privatized the liquor distribution system in the state, by authorizing a few ADAs (rather than the state) to warehouse and distribute liquor to retailers. (The state continues to act as the wholesaler of spirits.)¹

FISCAL IMPACT:

The bill would have no budgetary impact on the Liquor Control Commission.

Fiscal Analyst: Mark Wolf

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.

¹ This provision has been subject to some litigation in recent years in *National Wine & Spirits, Inc. v. State of Michigan*, where the constitutionality of this provision (on Commerce Clause grounds) was challenged. See, <http://coa.courts.mi.gov/resources/asp/viewdocket.asp?casenumber=243524&fpieces=&inqtype=public&yr=0> and [\[http://courts.michigan.gov/supremecourt/Clerk/01-06/126121/126121-index.htm\]](http://courts.michigan.gov/supremecourt/Clerk/01-06/126121/126121-index.htm). The state Court of Appeals ruled in May 2004 that this provision was constitutional. The state Supreme Court held oral arguments on this case, but ultimately reconsidered and denied the application for leave to appeal in November 2006 (and April 2007), thus upholding the decision of the Court of Appeals. In its brief in opposition before the state Supreme Court, regarding this provision, the Attorney General noted that at the time it was enacted, "the Legislature recognized that ADAs would be receiving funds in connection with performing functions which had previously been performed by the State and that this could give ADAs an unfair economic advantage should they enter into wine wholesaling activities in direct competition with the then-existing non-ADA wine distribution network...Thus, the Legislature prohibited ADAs (who were or would become wholesalers) from becoming 'dualing' with wine wholesalers where the ADA was not already authorized to distribute those dualing wine products in sales territories prior to the privatization law and the creation of the ADAs. This limited restriction was to preserve the existing structure for the distribution of wine."