



Senate Fiscal Agency
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BILL



ANALYSIS

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Senate Bill 202 (Substitute S-1 as passed by the Senate)
Sponsor: Senator Alan Sanborn
Committee: Economic Development and Regulatory Reform

(as enrolled)

Date Completed: 2-25-09

RATIONALE

Some wine makers and brewers in Michigan apparently would like to participate with other wine makers and brewers, respectively, in joint ventures that are known as alternating proprietor operations (where two or more wine makers or brewers take turns using the physical premises of a facility). The Michigan Liquor Control Code, however, does not specifically authorize joint ventures between multiple wine makers or multiple brewers, and Michigan reportedly is the only state that does not allow these collaborative operations. It has been suggested that alternating proprietor operations be allowed for wine makers and for brewers, with the written approval of the Liquor Control Commission (LCC) and pursuant to Federal regulations.

In addition, under Michigan law, a supplier of alcoholic beverages technically may not have an interest in another supplier, but in reality that occurs when a major producer acquires a smaller operation that is maintained as a separate entity. Some people believe that such horizontal integration at the supplier level should be specifically allowed, while prohibitions against ownership at different levels of licensure should be reiterated.

CONTENT

The bill would amend the Michigan Liquor Control Code to do all of the following:

- Allow the Liquor Control Commission to approve alternating proprietor operations for a wine maker**

participating with one or more other wine makers and for a brewer participating with one or more other brewers, subject to State and Federal approval.

- Specify that the Code's prohibitions regarding business relationships between manufacturers, wholesalers, and vendors would not prohibit a supplier from having any interest in any other supplier.**
- Prohibit a manufacturer from having any interest in a wholesaler.**
- Prohibit two or more wine makers from collectively delivering wine to a retail licensee.**

Under the bill, "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. "Manufacturer" would mean a wine maker, small wine maker, brewer, micro brewer, manufacturer of spirits, small distiller, brandy manufacturer, and mixed spirit drink manufacturer. (Under the Code, an "outstate" seller of beer, wine, or mixed spirit drink is someone licensed by the LCC to sell beer, wine, or mixed spirit drink that has not been manufactured in Michigan to a wholesaler in Michigan.)

Alternating Proprietor Operations

The bill would allow the LCC to approve either of the following pursuant to administrative rule R 436.1023(3), 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 (27 CFR Part 24, Subpart D, Section 24.136, which provides for the operation of wine premises by alternating proprietors).
- A brewer participating with one or more brewers in an alternating proprietor operation in accordance with Federal regulations (27 CFR Part 25, Subpart F, Section 25.52, which provides for exceptions to construction, equipment, and methods of operations of a brewer).

(Administrative Rule R 436.1023(3) prohibits a licensee from leasing, selling, or transferring possession of a portion of a licensed premises without the prior written approval of the LCC.)

Ownership Interest & Activities

Section 603 of the Code prohibits certain business relationship between manufacturers, wholesalers, and vendors (as described in **BACKGROUND**, below). The bill specifies that Section 603 would not prohibit a supplier from having any interest, directly or indirectly, in any other supplier.

The bill also would prohibit a manufacturer from having any direct or indirect interest in a wholesaler, and would prohibit a wine maker from collectively delivering wine, with any other wine maker, to retail licensees.

MCL 436.1603

BACKGROUND

Section 603 of the Michigan Liquor Control Code prohibits a manufacturer, mixed spirit drink manufacturer, warehouser, wholesaler, vendor of spirits, or outstate seller of beer, wine, or mixed spirit drink from having any financial interest in the establishment, maintenance, operation, or promotion of the business of any other vendor.

Those entities, as well as a stockholder of any of them, also are prohibited from having an interest by ownership in fee, leasehold, mortgage, or otherwise, in the establishment, maintenance, operation, or

promotion of the business of any other vendor.

In addition, a manufacturer, mixed spirit drink manufacturer, warehouser, wholesaler, vendor of spirits, or outstate seller of beer, wine, or mixed spirit drink may not have an interest by interlocking directors in a corporation or by interlocking stock ownership in a corporation in the establishment, maintenance, operation, or promotion of the business of any other vendor.

Section 603 also prohibits a person from buying the stock of any of those entities, placing the stock in any portfolio under an arrangement, written trust agreement, or form of investment trust agreement, issuing participating shares based upon the portfolio, trust agreement, or investment trust agreement, and selling the participating shares within this State.

These prohibitions are subject to a requirement that the Liquor Control Commission allow a small distiller to sell brands of spirits it manufactures for consumption on the licensed premises at that distillery. The prohibitions also are subject to a provision that allows a brewpub to have an interest in up to two other brewpubs as long as the combined production of all of the locations in which the brewpub has an interest does not exceed 5,000 barrels of beer per year.

In addition, the prohibitions apply except as provided in Section 605, which pertains to the acquisition of real property by a brewer, manufacturer, mixed spirit drink manufacturer, warehouser, wholesaler, vendor of spirits, authorized distribution agent, or outstate seller of beer, wine, or mixed spirit drink.

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

Michigan law does not specifically allow alternating proprietor operations for wine makers or brewers, but Federal law provides regulations for those operations. According to publications of the Alcohol and Tobacco Tax and Trade Bureau, an "alternating

proprietorship" is an arrangement in which two or more people take turns using the physical premises of a winemaking facility or a brewery. In most situations, the proprietor of an existing facility agrees to rent space and equipment to a new proprietor. This allows existing wineries or brewers to use excess capacity and gives new entrants to the wine or beer business an opportunity to begin on a small scale without investing in premises and equipment. Allowing two or more wine makers or two or more brewers to enter into such collaborations would help to promote and sustain small business development in Michigan. Under the bill, with the approval of the LCC and pursuant to Federal regulations, one wine maker or one brewer could use the equipment and premises of another wine maker or brewer in the production of its beverages.

Supporting Argument

Occasionally, a large licensed supplier of alcoholic beverages, such as Anheuser-Busch, acquires another entity, such as a small regional brewery, that supplies the same type of alcoholic beverage. When this occurs, the licensee technically is in violation of the Liquor Control Code if the acquired business is maintained as a separate legal entity under another name. The bill would allow such horizontal integration by specifying that a supplier could have an ownership interest in another supplier. At the same time, however, Michigan law should clearly prohibit vertical integration of licensees (i.e., a manufacturer or supplier should not be able to own a wholesaler or retailer). While allowing the supplier-supplier relationship described above, the bill explicitly would prohibit a manufacturer from having any interest in a wholesaler. It also clearly specifies that wine makers could not collectively deliver wine to a retail licensee, thereby circumventing licensed wholesalers. These provisions would reinforce Michigan's three-tier system of alcoholic beverage distribution (manufacturer/supplier, wholesaler, and retailer).

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill would increase the costs of the Liquor Control Commission within the Department of Energy, Labor, and Economic

Growth by a minimal amount due to potential expenses for registering changes of ownership that the bill would permit. The LCC is funded by several restricted fund sources, including liquor license revenue and the liquor purchase revolving fund.

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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.