



**House
Legislative
Analysis
Section**

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BEER/WINE EXTENSIONS

House Bill 4764 as introduced
First Analysis (5-23-95)

Sponsor: Rep. Sue Rocca
Committee: Regulatory Affairs

THE APPARENT PROBLEM:

Currently, 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.)

Public 275 of 1994 amended the Michigan Liquor Control Act to provide a temporary solution to a dispute between wholesalers and manufacturers with regard to exclusive sales territories for beer and wine "brand extensions". (These are extensions, or spin-offs, of established brands, e.g., the brand Michelob, and its spin-offs such as Michelob Dark, or Michelob Dry.) The act provided definitions of the terms "brand" and "brand extension" and required a manufacturer to assign a brand extension to the wholesaler who was the current distributor of the brand from which the brand extension resulted. Assignments made prior to January 1, 1994 were excluded from this requirement. In regard to acquisitions, whereby one manufacturer acquired the right to assign brands of another manufacturer, the act required that between January 1, 1994 and March 1, 1995, brand extensions would have to be assigned to the wholesalers who had rights to distribute the associated brand. (Public Act 8 of 1995 subsequently extended the provisions until July 1, 1995.) This provision will expire on July 1, 1995, thus lifting the requirement to assign brand extensions of acquired companies to the current

distributors and allowing manufacturers to assign distribution rights of brand extensions to any wholesaler serving the particular territory.

Prior to the enactment of Public Act 275 of 1994, Miller Brewing Company purchased Molson Breweries USA, and, during the legislative deliberations on P.A. 275, representatives of Miller and their wholesalers objected to the restrictions that bill would impose on their ability to get new acquisitions into their distribution system. Subsequent to the enactment of Public Act 275 of 1994, the Miller Brewing Company filed suit against the state alleging that the provisions of the act violated Articles I, Sections 10 of both the state and federal constitutions by impairing its ability to distribute brand extensions to wholesalers of its choice. The suit was recently dismissed by agreement of the parties. There is, therefore, no judicial interpretation of the brand extension language. Nor has an agreed-upon solution to the dispute regarding assignment of distribution rights resulting from acquisitions of one manufacturer by another been negotiated between the wholesalers and manufacturers. Legislation has been proposed that would delete the provisions of Act 275 of 1994 that pertain to brand extension assignments in an acquisition of one manufacturer by another.

THE CONTENT OF THE BILL:

House Bill 4764 would delete subsections of the Michigan Liquor Control Act regulating distribution assignments of brand extensions when one manufacturer acquires the right to assign brands of another manufacturer. (The other provisions of Public Act 275 of 1994, including the requirement that a manufacturer assign brand extensions to the wholesaler who currently distributes the associated brand, would remain in effect indefinitely. The statute would no longer specifically address situations in which one manufacturer acquires another.)

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The deleted subsections pertain to brand extensions of beer, wine, mixed wine, and mixed spirit beverages. Under the bill, the following provisions would be deleted:

*Provisions requiring a manufacturer that acquires the right to assign brands of another manufacturer or outstate seller between January 1, 1994 and July 1, 1995 to assign a brand extension to the current wholesaler of the brand.

*A provision that is scheduled to take effect July 1, 1995 permitting a manufacturer that acquires the right to assign brands of another manufacturer to assign a new brand extension to a wholesaler other than the one currently distributing the brand. Under this provision, a brand assigned between January 1, 1994 and July 1, 1995 would remain assigned to the assigned wholesaler.

MCL 436.30a and 436.30d

FISCAL IMPLICATIONS:

Fiscal information is not available.

ARGUMENTS:

For:

Corporate takeovers, company buy-outs, and mergers are happening at an unprecedented rate. The bill would enable wholesalers to retain distribution rights of brands and brand extensions regardless of acquisitions or transfers at the supplier level. Many wholesalers are family-owned businesses. Much time and money is spent by wholesalers in establishing and building relationships with the retailers in their territories. Without the protection that the bill would afford, wholesalers would be at the mercy and whim of suppliers, especially when an existing manufacturer was purchased by another and brands and brand extensions could be removed from the current wholesalers to the purchasing manufacturer's network of distributors. Wholesalers are concerned that their businesses could be at risk without the protection afforded by the bill.

Against:

As written, the bill would require brands and brand extensions, even in the case of one manufacturer buying out another, to continue to be assigned to the current distributors of the brand.

Representatives of Miller Brewing and its current wholesalers say that acquiring other domestic brands and import suppliers is a strategy designed to increase the financial viability and competitiveness of the company and its distributors. If new brands introduced after an acquisition must be assigned to non-Miller distributors, the incentives to make acquisitions and introduce new products are greatly reduced. Representatives of Miller Brewing would like to see language added to the bill for binding arbitration in certain circumstances when an agreement cannot be reached between a manufacturer and a wholesaler.

Response:

Some would say it is not fair and equitable to require wholesalers to enter into arbitration whereby a wholesaler could be forced to sell the brands of a manufacturer to another wholesaler even if one or both of the wholesalers are unwilling to participate in the transaction, or if the sale of the brand in question could threaten the viability of a wholesaler's business.

POSITIONS:

The Michigan Beer and Wine Wholesalers Association supports the bill as written, without amendment. (5-22-95)

The Liquor Control Commission has no position on the bill. (5-22-95)

The Miller Brewing Company is opposed to the bill as written, but would support the bill with a brand acquisition amendment. (5-22-95)