

Legislative Analysis



MICHIGAN CRAFT BEVERAGE COUNCIL

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 4667 (reported from committee as H-2)
Sponsor: Rep. Brandt Iden

Analysis available at
<http://www.legislature.mi.gov>

House Bill 4668 (reported from committee w/o amendment)
Sponsor: Rep. Klint Kesto
Committee: Regulatory Reform
Complete to 7-5-17

BRIEF SUMMARY: House Bill 4667 renames the Grape and Wine Industry Council as the "Michigan Craft Beverage Council," revises the council's membership, and modifies its duties.

House Bill 4668 allows money received by the Michigan Liquor Control Commission from certain sources to be credited to the Michigan Craft Beverage Council, and replaces references to the Grape and Wine Industry Council with the Michigan Craft Beverage Council.

The bills are tie-barred to each other and would take effect 90 days after enactment.

FISCAL IMPACT: See *Fiscal Information* below for a detailed discussion on the fiscal implications of the legislation.

THE APPARENT PROBLEM:

Michigan is said to rank in the top 10 in the nation for production among states that produce wine and also for the number of wineries, in addition to producing many prize-winning wines. This may be due in part to the efforts of the Grape and Wine Industry Council in funding research and promoting Michigan wine products and tourism. Efforts of the Council are funded by certain fees collected by the Michigan Liquor Control Commission from some licensed entities. Over the past several years, however, the public's taste for craft beers, alcoholic ciders and sodas, wines made from fruits other than grapes, and craft distilling has exploded. The change in consumer interest has led some to feel that the mission of the Council should be broadened to embrace the entirety of the craft beverage phenomena and work towards growing the entire industry, not just one segment of it. Legislation to make the necessary statutory changes has been offered.

THE CONTENT OF THE BILLS:

House Bill 4667 would amend Section 303 of the Michigan Liquor Control Code (MCL 436.1303). Executive Reorganization Order 2014-2 abolished the Grape and Wine Industry Council in existence at the time and created a new Grape and Wine Industry Council with a revised membership. The bill makes further revisions to the statutory

provisions pertaining to the Council. Significantly, the bill renames the Council as the Michigan Craft Beverage Council.

The bill also changes the membership of the Council to one nonvoting member and seven voting members (instead of one nonvoting member and 11 voting members). The director of the Department of Agriculture and Rural Development (MDARD), or a designee, would be the nonvoting member. A voting member could appoint a designee who was located in Michigan. The seven voting members (or designees) are as follows:

- An individual who operates a retail food establishment that holds a specially designated merchant license (SDM) and sells Michigan wines or beer.
- An individual who operates a restaurant that holds a Class C license and serves Michigan wines or beer.
- Two wine makers.
- A wine maker that manufactures wine made from fruit other than grapes.
- A large brewer, defined in the bill as a brewer that produces at least 60,000 barrels of beer but not more than one million barrels of beer per year. In determining this barrel threshold, all brands and labels of a brewer, regardless of whether brewed in Michigan, must be combined and include all facilities for production of beer owned or controlled by the same person.
- One of the following:
 - A microbrewer.
 - An individual who holds a brewpub license.
 - A small distiller.
 - A distiller that manufactures more than 60,000 gallons of spirits per year.

The voting members must be appointed by the governor and would serve three-year terms (or until a successor is appointed). Initial terms will be staggered as specified in the bill. A nongovernmental member could (instead of being required to) receive \$50 per day for each day spent in actual attendance at Council meetings and traveling expenses while on Council business.

Currently, the membership under E.R.O. 2014-2 comprises the following:

- Three wine makers appointed by the governor.
- A wine grape grower appointed by the governor.
- The Chief Executive Officer of the Michigan Economic Development Corporation, or a designee.
- The Director of the Department of Agriculture and Rural Development, or a designee, who shall serve as chairperson of the council.
- A staff member of Michigan State University appointed by, and serving at the pleasure of, the Dean of the College of Agriculture and Natural Resources of Michigan State University.
- The Chairperson of the Liquor Control Commission, or a designee, as an ex officio member.

- A person who operates a retail food establishment that holds a specially designated merchant license and sells Michigan wines, or a person who operates a restaurant that holds a Class C license and serves Michigan wines, appointed by the governor.
- A beer and wine wholesaler who markets Michigan wine, appointed by the governor.
- Two members of the public, appointed by the governor.

Council duties

Currently, several of the Council's duties are focused on wine grapes. The bill would instead apply those provisions to fruits used in winemaking. The bill also adds the following duties:

- Providing for research on hops, barley, beer, and spirits, including, but not limited to, methods of planting, growing, controlling insects and diseases, marketing, processing, distribution, advertising, sales production, and product development.
- Providing the brewing and distilling industries, including growers, brewers, distillers, distributors, and retailers, with information relative to proper methods of handling and selling hops, barley, beer, and spirits.
- Developing and administering financial aid programs to hops and barley growers to encourage increased planting of desirable varieties in Michigan in microclimates determined to provide the best conditions for producing quality beer.
- Preparing and approving an annual budget.
- Applying for, receiving, and accepting a grant, if available, from the office that promotes the Pure Michigan tourism campaign, or any successor campaign.
- Establishing educational partnerships to benefit the beer, wine, and spirits industries.

The bill will also require the Council to expend at least 50 percent of its annual budget on research and financial aid to growers.

Lobbying

The bill will prohibit the Council from engaging in lobbying, although the Council, a Council member, or Council employee would not be prohibited from providing technical information to the Legislature or to MDARD, regardless of whether the person is appearing before an officially convened legislative committee or MDARD hearing panel, if the technical information is related to the Council's duties. "Lobbying" and "technical information" mean those terms as defined in Section 5 of Public Act 472 of 1978 (MCL 4.415).

The bill would not prevent the Council from establishing a commodity committee under the Agriculture Commodities Marketing Act.

House Bill 4668 would also amend the Michigan Liquor Control Code (MCL 436.1221 and 436.15431). Currently, all money deposited by the Liquor Control Commission with the state treasurer must be credited to either the revolving fund for expenditures authorized by the Code or credited to the General Fund to be available for the purposes for which the

General Fund is available. The bill would add the Michigan Craft Beverage Council, to be used as described in Section 303 (as amended by House Bill 4667), as a third option for where the money may be credited.

The bill also replaces references to the Grape and Wine Industry Council with references to the Michigan Craft Beverage Council.

BACKGROUND INFORMATION:

The bills are similar to legislation introduced in the 2015-2015 Legislative Session—House Bill 5025 and Senate Bill 671.

FISCAL INFORMATION:

The Michigan Grape and Wine Industry Council was established in 1998 under Section 303 of the Michigan Liquor Control Code of 1998 as an agency within the Michigan Department of Agriculture. Executive Reorganization Order 2014-2 abolished the statutory Michigan Grape and Wine Council and transferred all of the statutory authority, powers, duties, functions, and responsibilities under Section 303 of the Michigan Liquor Code to a new Michigan Grape and Wine Council under the Michigan Department of Agriculture and Rural Development (MDARD). As currently provided under Section 303, the Council is directed to: provide for research on wine grapes and wines; provide the wine industry with information on the proper methods of handling and selling wine grapes and wine; provide for market surveys and analysis; promote the sale of Michigan wine grapes and wines; and develop and administer financial aid programs to wine grape growers to encourage the planting of desirable wine grapes in Michigan.

A number of licensing and regulatory fees are established under the Michigan Liquor Code. Section 543 of the Code provides for the distribution of fee revenue. Generally retail license and renewal fees are earmarked for enforcement of the licensing and regulatory enforcement provisions of the Liquor Code. Section 543 currently earmarks all other license and license renewal fees, i.e. fees other than retail license and renewal fees, to the Michigan Grape and Wine Council. The fees earmarked to the Grape and Wine Council in Section 543 are designated in MDARD budget as "non-retail liquor fees." These non-retail liquor fees generate approximately \$750,000 annually.

In the 2015–16 fiscal year MDARD budget, the total appropriation for Council activities was \$856,500, of which \$45,000 represented private industry funds used to support specific industry promotional events. The majority of funding, \$811,500, came from non-retail liquor fee revenue. The 2016–17 fiscal year MDARD budget appropriates \$1.1 million for Council activities: \$45,400 from private industry funds, \$875,600 from non-retail liquor fees, and \$170,000 from the state General Fund. The General Fund support was designated in the budget as "one time basis only."

According to the Council's internal budget for FY 2015-16, estimated administrative expenses (staff salaries, benefits, travel, and other administrative expense) were \$488,000

or 57% of projected Council expenditures. Consumer and trade promotion and education totaled \$150,000 or 18% of the budget; the budget line for viticulture and enology research totaled \$120,000 or 14% of the Council's internal budget. Each year the Council awards grants, primarily to Michigan State University researchers, to fund various wine grape research proposals.

The 2015–16, 2016–17 fiscal year enacted MDARD budget, as well as the proposed FY 2017–18 fiscal year MDARD budget, authorized 3.0 full-time equated positions for the Council.

House Bill 4667 would rename the Grape and Wine Industry Council as the Michigan Craft Beverage Council and give the Council additional areas of responsibility to the Council's mission as described in the body of this analysis. House Bill 4668 would amend Sec. 543 to earmark non-retail liquor fees to the Michigan Craft Beverage Council.

Neither House Bill 4667 nor House Bill 4668 provide for new or increased fee revenue. Without additional funding, the additional program activities established in House Bill 4667 would have to be funded out of existing Council resources, specifically, non-retail liquor fee revenue.

Section 303(4) of the Liquor Code currently authorizes the Council to employ personnel and incur expenses to carry out the purposes of the Council. The section also requires that personnel and Council expenses be paid out of the non-retail liquor fee revenue earmarked to the Council in Section 543(2). House Bill 4667 would retain the current language of Section 303(4) but would add new language that would require the Council to spend at least 50% of its annual budget on research and financial aid programs.

House Bills 4667 and 4668 would not have a fiscal impact on the Department of Licensing and Regulatory Affairs.

ARGUMENTS:

For:

Perhaps the strongest reason advocates provide for changing the purpose and make-up of the Grape and Wine Industry Council is that not all who currently pay into it are represented either by membership or by function of the Council. Many entities, including brewers and distillers, licensed by the Michigan Liquor Control Commission remit fees that fund Council activities. Currently, Council activities center solely on the wine industry. To that end, the Council has certainly contributed to the growth and success of Michigan wineries and their products. Now however, consumers are showing increased interest in other craft beverages—specifically, craft beers and craft distilling.

Merging all parties of the craft beverage industry into one council has the potential to make Michigan one of the top (if not Number One) destinations for unique wines, ciders, craft beers, and craft distilling (e.g., blended spirits, added botanicals, etc.). With the bill's emphasis on earmarking at least half of the revenue for research and financial aid to

growers, the bill also has the potential to create jobs and spur growth in related fields such as agriculture. Should the Pure Michigan campaign offer grants to increase tourism, the bills allow the Council to apply for and receive grants to encourage more people to come, sample, and tour the state's many craft beverage producers.

The Council membership will change under the bills to concentrate on members representing the craft beverage industry. Research efforts would be expanded to help brewers and distillers grow (wine and grape research would also continue). For example, the state currently does not raise enough hops and barley to meet the needs of Michigan-based brewers. With the bills' potential to ensure more of the Council's fund goes to research (instead of administrative and other expenses), brewers may see new research projects funded that could lead to less dependence from other states and Canada for needed ingredients. The bill also retains a focus for Council membership to be Michigan-based, though it does open the door for a large out-of-state producer who has a presence in Michigan to be included as long as that entity has an agent based here.

Against:

Currently, the director of the Department of Agriculture and Rural Development (MDARD) or the director's designee has been a voting member and has served as chairperson. House Bill 4667 would change that. Seeing that the purpose of MDARD is to provide oversight of agricultural pursuits in the state and that the agency is a neutral party rather than a member of one segment of the craft beverage industry, the voting status of the director and appointment as chairperson should be restored. Similarly, the MDARD director currently has the authority to appoint a staff person of Michigan State University, which has a global reputation for agricultural research, to the Council. The bill removes this member. Removing the MSU member, along with other positions cut by the bill, eliminates people with needed expertise, input, and counsel. With the bill's emphasis on research, a member with ties to a state research university is even more valuable and necessary as industry members on the Council debate which research projects should be pursued. At a minimum, this member needs to be restored to the Council. Moreover, the employment contracts for academic and support staff at universities typically detail the percentage the person must spend on various aspects of the job. Attending Council meetings would fall outside of the person's job duties unless it was specifically included in a person's job duties. However, to have it included usually entails actually being appointed as a member. Thus, to ensure the continued valuable input of a MSU staff person, the MSU position should also be restored.

POSITIONS:

A representative of the Michigan Brewers Guild testified in support of the bills. (6-7-17)

The Michigan Licensed Beverage Association indicated support for the bills. (6-7-17)

The Michigan Wine Producers Association indicated support for the bills. (6-7-17)

Vander Mill Cider indicated support for the bills. (6-7-17)

The Michigan Department of Agriculture and Rural Development is neutral on the bills.
(6-7-17)

The Michigan Liquor Control Commission has not taken a position on the bills. (6-7-17)

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