

Legislative Analysis



BRANDS AND BRAND EXTENSIONS IN THE LIQUOR CONTROL CODE

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Senate Bill 868 (S-2) as reported from House committee
Sponsor: Sen. Kevin Hertel
House Committee: Regulatory Reform
Senate Committee: Regulatory Affairs
Complete to 12-8-24

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

SUMMARY:

Senate Bill 868 would amend the Michigan Liquor Control Code to change amend the act's definitions of the terms *brand* and *brand extension*. (See Background for the current definitions of those terms.)

Under the bill, *brand* would mean any word, group of words, letter, group of letters, symbol, group of symbols, or combination of those adopted and used by a *supplier* to name, identify, or trademark a specific beer, malt beverage, wine, mixed wine drink, or mixed spirit drink product. A supplier's legal name, assumed name, trade name, or any doing-business-as name would be considered a brand name, identifier, or trademark if it is used on the front of the container or packaging of the beer, wine, mixed wine drink, or mixed spirit drink to market the product, except under the following circumstances:

- The use of a supplier's legal name, assumed name, trade name, or any doing-business-as name would not be considered a brand name, identifier, or trademark if it is used on the back of the container solely for any of the following purposes:¹
 - Identifying the supplier that has manufactured the beer, wine, mixed wine drink, or mixed spirit drink.
 - Identifying the supplier that has bottled the beer, wine, mixed wine drink, or mixed spirit drink.
 - Identifying the supplier that imported the beer, wine, mixed wine drink, or mixed spirit drink.
- If the beer, wine, mixed wine drink, or mixed spirit drink includes two or more brands of different suppliers, in which case the supplier that registers the product with the Michigan Liquor Control Commission must appoint the wholesaler or wholesalers that have rights to that supplier's underlying brand.

Brand extension would mean any beer, wine, mixed wine drink, or mixed spirit drink brand that is marketed, in any manner, using the same name, identifier, or trademark associated with a brand that has preceded it in being sold or offered for sale in this state, or a derivative or portion of the name, identifier, or trademark, regardless of any of the following:

- The addition of words or letters in a word.
- The addition of a name, identifier, or trademark.

¹ As written, this says that use of the supplier's name on the back of a container means that the name on the front of a container or package does not constitute a brand. That is, under the bill, a supplier's name used as marketing on the front of a container or package would constitute a brand UNLESS the name is also used on the back to identify the supplier.

- The addition of a symbol.
- Any differences in the packaging, formulation, or production of the beer, wine, mixed wine drink, or mixed spirit drink or the shape, size, or type of container in which the beer, wine, mixed wine drink, or mixed spirit drink is sold.
- Changes in the alcohol category used in the brand extension. As used in this provision only, *alcohol category* means a beer category, a wine category, a mixed wine drink category, or a mixed spirit drink category.
- The manufacturer, importer, or licensed outstate seller of the brand extension being different from the manufacturer, importer, or licensed outstate seller of the underlying brand the extension is based on.

Under both current law and the bill, **supplier** means a brewer, micro brewer, an outstate seller of beer, a wine maker, a small wine maker, an outstate seller of wine, a manufacturer of mixed wine drink, an outstate seller of a mixed wine drink, a mixed spirit drink manufacturer, or an outstate seller of mixed spirit drink.

Finally, under the bill, distribution rights in effect as of the bill's effective date would be preserved. However, the bill would not limit the application of the updated definition of brand extension to a beer, wine, mixed wine drink, or mixed spirit drink that would be considered a brand extension after the bill's effective date.

MCL 436.1105

BACKGROUND:

Under current law, **brand** means any word, name, group of letters, symbol, trademark, or combination thereof adopted and used by a supplier to identify a specific beer, malt beverage, wine, mixed wine drink, or mixed spirit drink product and to distinguish that product from another beer, malt beverage, wine, mixed wine drink, or mixed spirit drink product that is produced or marketed by that or another supplier.

Brand extension means any brand that incorporates all or a substantial part of the unique features of a preexisting brand, regardless of whether the extension is beer, wine, mixed wine drink, or mixed spirit drink.

BRIEF DISCUSSION:

According to supporters of the bill, the legislation is intended to clarify existing law and remove vagueness and ambiguity. What constitutes a brand extension, as opposed to being a new brand, has been a source of contention and litigation.² Supporters say that the bill does not change the scope of the current law but would make it clearer to prevent such costly disputes in the future.

Opponents of the legislation argue that, rather than clarifying existing law, the bill proposes new provisions that are overly broad and could be used by distributors and wholesalers to stifle competition and limit creativity. In particular, they raise concerns that the bill does not address collaborations between different producers, which are becoming more common in the industry.

² <https://www.courts.michigan.gov/c/courts/coa/case/371248>

FISCAL IMPACT:

Senate Bill 868 would not have a fiscal impact on any units of state or local government.

POSITIONS:

A representative of the Michigan Beer and Wine Wholesalers Association testified in support of the bill (11-12-24).

Great Lakes Wine & Spirits indicated support for the bill. (12-3-24)

Representatives of the following entities testified in opposition to the bill (11-12-24):

- Michigan Spirits Association
- New Holland Brewing Company
- Leelanau Cellars
- Michigan Wine Producers Association
- Michigan Brewers Guild
- Traverse City Whiskey Co.

The following entities indicated opposition to the bill:

- Department of Licensing and Regulatory Affairs (11-12-24)
- Michigan Craft Distillers Association (11-12-24)
- Distilled Spirits Council of the United States (11-12-24)
- Wine Institute (12-3-24)

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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.