

BUSINESS BULLETIN

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May 2009

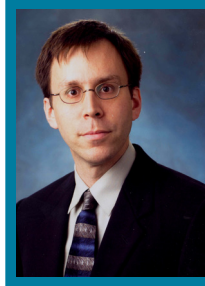
New Law Benefits Craft Beer & Wine Producers

by Ryan Kauffman, J.D.

Craft beers and wines have long been popular with Michigan consumers, and a new law that was enacted last month helps create a legal environment in which their popularity can continue to grow. The new law, 2009 PA 02, makes two important amendments to Michigan's Liquor Control Code. First, the amendment specifies that the Liquor Control Code's prohibitions regarding relationships between manufacturers, wholesalers, and retailers does not prohibit a supplier from having an interest in another supplier. In today's business climate, it is not uncommon for larger manufacturers of alcoholic beverages to absorb the operations of smaller brands.

Before 2009 PA 02 was enacted, Michigan generally prohibited licensed manufacturers from having a direct or indirect interest in any other vendor's business. However, the new law now permits this type of horizontal integration at the supplier level.

"Supplier" is defined under the law to include manufacturers (i.e., wine makers, small wine makers, brewers, micro-brewers, manufacturers of spirits and mixed spirits, small distillers, and brandy manufacturers), as well as outstate sellers



of beer or wine, outstate mixed spirit drink manufacturers, and vendors of spirits. Vertical integration, or ownership at different tiers of licensure, is still prohibited; accordingly, a manufacturer may not obtain an interest in a wholesaler or distributor. However, larger operators are now able to buy, produce, and market smaller craft beverages, or enter into certain types of partnership relationships for production purposes. The change will likely benefit consumers, who will have more opportunities to discover and try new products.

In addition, and on a somewhat related issue, 2009 PA 02 also specifically allows for "alternating proprietor operations" for wine makers and brewers. Alternating proprietor operations allow two or more wine makers, or two or more brewers, to enter into a joint venture or some other agreement to share the use of the same manufacturing premises. Although such collaborative agreements have been allowed in most other states and under federal law for some time, they had been prohibited in Michigan until now.

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Alternating proprietor operations will likely be particularly attractive to new wineries and breweries trying to enter the market... By allowing a new wine maker or brewery to effectively lease manufacturing space, entry into the market may be achieved with far lower start-up expenses.

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ter the market. Obviously, start-up costs for a winery or brewery can be high. By allowing a new wine maker or brewery to effectively lease manufacturing space, entry into the market may be achieved with far lower start-up expenses. There are clear benefits for the established wine maker or brewery too. The manufacturer that controls the premises, generally known as the "host," will be receive income for its excess capacity.

Each business will remain responsible for its own production, recordkeeping, reporting, labeling, and taxes and will be otherwise completely independent of the other. Moreover, the collaboration will require approval of the Michigan Liquor

Control Commission, the U.S. Department of Treasury, and the Bureau of Alcohol and Tobacco Tax and Trade. Nevertheless, with the formalities in place, a joint venture or lease agreement creating alternating proprietor operations can create a win-win arrangement for the businesses involved.

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