SFA BILL ANALYSIS
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Senate Bill 874 (as reported with amendment)
Sponsor: Senator Christopher D. Dingell
Committee: Regulatory Affairs

Date Completed: 5-15-90

RATIONALE

Among other things, the Michigan Liquor Control Act regulates the business relations between suppliers and wholesalers of wine. Specifically, the Act prohibits a supplier from cancelling, terminating, failing to renew, or refusing to continue under an agreement with a wholesaler unless the supplier has good cause to do so, acts in good faith, and complies with the applicable notice requirements of the Act. (The term "supplier" refers to a wine maker, outstate seller of wine, or a master distributor.) In addition, the Act specifies that a successor to a supplier that continues in business as a supplier is bound by all terms and conditions of each agreement of the supplier in effect on the date of purchase (of the supplier by the successor). Theoretically, then, the corporate takeover of a supplier by another company should not affect any existing agreements between the supplier and his or her wholesalers. In practice, however, some contracts apparently have been unilaterally, and legally, terminated by the successor company in a corporate takeover. In one reported case, the contracts could be terminated because there was no actual "purchase" per se of one company by another. In another case, in which a supplier was purchased by another company, the wine producers reportedly chose not to contract with the successor company and selected a new supplier who did not honor the contracts between the wholesalers and the original suppliers. Some have suggested that the rights of wholesalers in these instances should be better protected.

A second area of concern for wine suppliers and wholesalers involves the issues of venue and choice of law. "Venue" in this context concerns the state in which litigation is held and "choice of law" involves the selection of the laws of a particular state under which the provisions of a distribution agreement will be interpreted. Since the Liquor Control Act does not specify that litigation of a distribution agreement must take place in a Michigan court, some suppliers have attempted to circumvent the possibility that a Michigan court might hear a dispute by inserting in the agreement a clause that designates that the courts of their home state are the only places in which litigation can be filed. In the past, apparently, it was felt that the Michigan courts would overrule such provisions and apply the Michigan franchise law in disputes occurring between Michigan businesses and outstate interests. Recently, however, courts in other states evidently have ruled that clauses that designate the laws of one state as controlling take precedence over other laws. For example, a spirits wholesaler in New Mexico became involved in a dispute with a Kentucky distillery and filed suit in New Mexico under that state's franchise law. The New Mexico courts apparently ruled, however, that a provision in the distribution agreement that established the laws of Kentucky as controlling took precedence over the New Mexico franchise law. Reportedly, then, the distiller was able to terminate the wholesaler without having to show good cause. It has been suggested that in order to protect Michigan wholesalers provision should be made to ensure that they are allowed to file suit in Michigan.

CONTENT

The bill would amend the Michigan Liquor Control Act to specify that a wine

supplier's successor would be bound by certain agreements with a wholesaler; to define "successor"; and to specify that wine suppliers could not require disputes between a supplier and a wholesaler to be determined according to another state's laws, in another state's courts, or in Federal court in another state.

Under the Act, a successor to a supplier that continues in business as a wine maker, an outstate seller of wine, or a master distributor is bound by all terms and conditions of each agreement of the supplier in effect on the date of purchase. The bill specifies, instead, that a successor continuing in business as a wine maker, outstate seller of wine, or master distributor would be bound by all terms and conditions of each agreement of the supplier "with a wholesaler licensed in this state that were in effect on the date on which the successor received the distribution rights of the previous supplier". ("Agreement" means any agreement between a wholesaler and a supplier whereby a wholesaler is granted the right to offer and sell a brand or brands of wine sold by a supplier.)

The bill would define "successor" as a supplier who obtained, in any manner from any person, including a person who was not a supplier, the distribution rights of one or more brands of wine that a licensed Michigan wholesaler had distributed in this State pursuant to an agreement with another supplier, who previously had the distribution rights for the brand or brands.

The bill would prohibit a supplier from requiring by a provision of any agreement, or any other instrument in connection with the agreement, that any dispute arising out of or in connection with that agreement be determined through the application of any other state's laws. Further, any supplier or wholesaler aggrieved by any dispute arising out of or in connection with an agreement governed by the Act would have the right to file an appropriate action consistent with the Act in any court in this State having venue.

MCL 436.30c

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

ARGUMENTS

Supporting Argument

The bill would help ensure that the rights of Michigan wholesalers to distribute brands of wine were not terminated without good cause or solely as the result of other business transactions. Further, it would ensure that disputes over distribution agreements governed by the Michigan Liquor Control Act could be litigated in Michigan.

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Senate Bill S.B. 877

Analysis Summary

See S.B. 161

SFA BILL ANALYSIS

Senate Bill S.B. 878

Analysis Summary

See S.B. 161