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Kincaid C. Brown

University of Michigan Law School, kcb@umich.edu

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Michigan Craft Beer Legislation

By Kincaid C. Brown

Michigan is currently in the midst of a craft beer boom. The Michigan Brewers Guild's member list includes more than 150 breweries and brewpubs¹ brewing craft beer. In 2013, Michigan cities finished first (Grand Rapids), second (Kalamazoo), and fourth (Ann Arbor) in the Beer City USA poll celebrating American Craft Beer Week. The national Brewers Association defines craft brewers as being small (annual production of fewer than six million barrels of beer), independent (less than 25 percent of the craft brewery is owned by "an alcoholic beverage industry member that is not a craft brewer"), and traditional (a majority of the brewer's beer is flavored using traditional or innovative brewing ingredients and their fermentation).²

Michigan's craft beer industry is boosting the state's economy. According to an analysis by the Brewers Association customized by the Michigan Brewers Guild, the craft beer industry is directly responsible for more than 5,000 Michigan jobs and contributes more than \$277 million to the state's economy and more than \$144 million in wages.³ When you add the economic output of suppliers for barley, hops, brewing equipment, brewery marketing materials, and the like, the Michigan craft beer industry contributes more than \$372 million to the economy.⁴

Types of establishments

What is the difference between a brewery, a microbrewery, and a brewpub in Michigan? A brewery is licensed to manufacture and sell its beer to licensed retailers⁵ and can sell its beer at one or two Michigan locations on its brewery premises.⁶ A microbrewery is limited to brewers

that annually produce fewer than 60,000 barrels of beer.⁷ A microbrewery producing fewer than 30,000 barrels of beer per year may sell its beer at any of its brewery locations,⁸ while a microbrewery producing more than 30,000 barrels of beer annually may sell its beer for consumption at not more than three of its brewery locations.⁹ A brewpub is limited to six locations¹⁰ and can manufacture up to 18,000 barrels of beer annually.¹¹ A brewpub's beer is sold only inside its own establishments for on- or off-premises consumption¹² and it must operate as a food service establishment¹³ where at least 25 percent of its gross sales are from food and nonalcoholic beverages consumed on the premises.¹⁴

Michigan law

To help maintain the momentum of the Michigan craft beer industry, the state legislature has made a number of recent amendments to the Michigan Liquor Control Code

of 1998.¹⁵ These pro-craft beer amendments stand in contrast to actions of other state legislatures. For example, in 2013, Texas amended its Alcoholic Beverage Code¹⁶ to prohibit breweries from being compensated for the sale of distribution rights for their beer and to allow beer distributors to sell the distribution rights. This legislative change has sparked a lawsuit between Texas craft beer brewers and the government.¹⁷

2013 Michigan legislative changes

In 2013, the legislature made Michigan craft beer easier to purchase around the state. Public Law 101 of 2013¹⁸ expanded the types of businesses that are legally permitted to fill growlers (refillable containers intended for the sale of beer for off-premises consumption¹⁹) to include locations that do not brew beer, provided specific conditions are met. Previously, only establishments with brewer, brewpub, or microbrewer licenses could fill or refill growlers. The act was intended to



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legalize the practice already in place in west Michigan where nonbrewer merchants were filling growlers for customers for sale.²⁰

2014 Michigan legislative changes

In 2014, the legislature passed a package of bills designed to help the craft beer industry continue its growth. The 2014 acts made the following amendments to existing law:

- Public Law 42 of 2014²¹ doubled the amount of beer microbreweries may produce annually from 30,000 barrels to 60,000 barrels.
- Public Law 43²² doubled the number of brewpubs a single owner may have an interest in from three to six, while allowing a maximum combined annual capacity of 18,000 barrels of beer. Public Law 353 of 2014²³ later increased the maximum annual capacity of beer a single brewpub may manufacture to 18,000 barrels.
- Public Law 44²⁴ increased the number of locations at which a brewer may sell its beer for on-premises consumption.
- Public Law 45²⁵ removed the requirement that a brewer developing, financing, operating, or promoting real property occupied by another vendor be designated by a state or federal agency as being located in an urban, commercial, or community redevelopment area, although the locality would still need to certify such a location.
- Public Law 47²⁶ allowed for the provision of advertising items to retailers to help market craft beer for sale. Public Law 353 of 2014²⁷ added keg couplers and sports

and entertainment tickets to the list of permitted advertising items.

- Public Laws 48²⁸ and 49²⁹ revised the requirements for payment for the per-barrel beer tax that is levied against brewers.
- Public Law 50³⁰ permitted microbrewers producing fewer than 1,000 barrels of beer annually to distribute their beer to retailers, provided specific conditions are met.

Introduced 2015 Michigan legislation

Although not yet passed,³¹ the Michigan House has introduced a bill³² to allow brewers to sell their beer directly to consumers without going through the Liquor Control Commission. Currently, microbrewers and brewpubs are limited to delivering beer.³³

Introduced 2015 congressional legislation

Currently being debated in Congress,³⁴ the Small Brewer Reinvestment and Expanding Workforce Act would adjust the small brewer tax rate and potentially allow small brewers to reinvest their saved tax dollars in their breweries and generate jobs. If passed, the act would halve (from \$7 to \$3.50) the per-barrel tax on the first 60,000 barrels brewed each year and lower from \$18 to \$16 the tax rate for brewers producing between 60,000 and 2 million barrels of beer.

Michigan already houses the fifth-most breweries, microbreweries, and brewpubs in the nation, and all signs point to continued growth in the state's craft beer economy with new projects announced across the state, including Detroit,³⁵ Saline,³⁶ and Grand Rapids,³⁷ and the promotion of craft

beer tourism as part of the Pure Michigan advertising campaign.³⁸ Cheers! ■

Kincaid C. Brown is the assistant director of the University of Michigan Law Library and chair of the State Bar Committee on Libraries, Legal Research, and Legal Publications.

ENDNOTES

1. Michigan Brewers Guild, *Breweries & Brewpubs* <<http://www.mibeer.com/breweries-and-brewpubs>>. All websites cited in this article were accessed June 23, 2015.
2. Brewers Association, *Craft Brewer Defined* <<https://www.brewersassociation.org/statistics/craft-brewer-defined/>>.
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5. MCL 436.1105.
6. MCL 436.1411.
7. MCL 436.1109.
8. MCL 436.1411.
9. *Id.*
10. MCL 436.1603.
11. MCL 436.1105.
12. *Id.*
13. MCL 436.1405.
14. MCL 436.1407.
15. MCL 436.1101 *et seq.*
16. 2013 Tex. Sess. Law Serv. Ch. 555 (West).
17. See *Live Oak Brewing v Tex Alcoholic Beverage Comm*, No. D-1-GN-14-005151 (98th Dist Ct Tex, 2014).
18. MCL 436.1537.
19. MCL 436.1537.
20. House Legislative Analysis, SB 27, May 28, 2013.
21. MCL 436.1109.
22. MCL 436.1603.
23. MCL 436.1105.
24. MCL 436.1411.
25. MCL 436.1605.
26. MCL 436.1609.
27. MCL 436.1609.
28. MCL 436.1409.
29. MCL 436.1301.
30. MCL 436.1203.
31. As of May 11, 2015.
32. HB 4174 (2015).
33. MCL 436.1203.
34. HR 232 (2015) and S 375 (2015).
35. Thibodeau, *Jolly Pumpkin Owner Explains Sour Beers, Excited to Open Detroit Location* (April 9, 2015) <http://www.mlive.com/entertainment/detroit/index.ssf/2015/04/jolly_pumpkin_detroit_owner_ex.html>.
36. Durr, *Brewery Begins Construction Inside Historic Building in Saline* (January 26, 2015) <http://www.mlive.com/business/ann-arbor/index.ssf/2015/01/brewery_begins_construction_in.html>.
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38. See Pure Michigan, *Michigan Breweries* <<http://www.michigan.org/breweries/>>.