

Legislative Analysis



LATE NIGHT AND SUNDAY MORNING LIQUOR SALES

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

House Bill 5056 (Substitute H-9)
Sponsor: Rep. Richard Hammel
Committee: Appropriations

Complete to 11-19-09

A REVISED SUMMARY OF HOUSE BILL 5056 (H-9) AS REPORTED FROM COMMITTEE 10-8-09

The H-9 Substitute would amend the Liquor Control Code of 1998, 1998 PA 58, to create two new special activity permits allowing permit holders (licensed retailers) to sell liquor before 12 noon (Eastern Time) on Sundays and between the hours of 2 a.m. and 4 a.m. (Eastern Time) everyday of the week. These new permits were originally proposed this year as part of Governor Granholm's FY 2009-10 Executive Budget Recommendation for the Department of Energy, Labor, and Economic Growth.

The bill, as introduced in June 2009, included the proposed fee increases, as recommended by the governor, as well as the two special activity permits. The substitute eliminates the fee increases and alters provisions concerning the ability of local units of government to authorize the issuance of either of the new permits, in order to bring the local approval provisions in greater conformity with provisions in current law regarding their approval authority concerning other liquor licenses.¹

Late Night Sales Permit

The bill would create a new "late night" special activity permit enabling on-premise and off-premise licensees to sell alcoholic liquor between 2 a.m. and 4 a.m. (Eastern Time), subject to the approval of the Liquor Control Code and the local unit of government. The permit would be an addendum to the retail license.² The permit fee would be \$1,500 per year.³

¹ Section 501 of the Liquor Control Code, MCL 436.1501, states, in part, "[a]n application for a license to sell alcoholic liquor for consumption on the premises, except in a city having a population of 750,000 or more, shall be approved by the local legislative body in which the applicant's place of business is located before the license is granted by the commission..." Section 916 of the Liquor Control Code, MCL 436.1916, authorizes the issuance of "entertainment" permits and conditions the issuance of the permit on the approval of the LCC, the legislative body of the local unit of government, and the local law enforcement agency. Off-premise licenses are generally not subject to prior local approval. See, also, *A Guide to the Rights and Responsibilities of Local Governments under the Liquor Control Code*, Michigan Department of Labor and Economic Growth, January 2004, [http://www.michigan.gov/documents/cis/locgovguide_184872_7.pdf].

² Under Section 501 of the Liquor Control Code, MCL 436.1501, licenses expire on April 30th of each year, and are subject to renewal.

³ Times included the bill are listed as being as Eastern Time. For licensed establishments in western Upper Peninsula communities in the central time zone, the 4 a.m. permit would allow for sales until 3 a.m. local time. Currently, the LCC's hours and operations rules (R. 436.1403 and R. 436.1503) do not specify the time zone when noting the legal hours of operation for licensed establishments. This, in effect, means that the standard "last call" time of 2 a.m. is 2 a.m. Eastern Time, where applicable, and 2 a.m. Central Time, where applicable.

In general, the Liquor Control Code currently prohibits the sale of alcohol between the hours of 2 a.m. and 7 a.m., Monday through Saturday, and between the hours of 2 a.m. and 12 noon on Sundays.⁴ The new late night permit would enable patrons of on-premise licensees to continue to consume alcohol until 4:30 a.m.⁵

Under the substitute, the LCC could issue a late night sales permit upon application from a licensee, subject to prior approval of the local unit (city, village, or township). In practice, upon receipt of the permit application, the LCC would forward it to the appropriate local unit for its review of the application. After its review, the local government could adopt a resolution approving the late night permit application. [The LCC would not approve the application without prior approval from the local unit.] The local government could also adopt a resolution completely prohibiting the issuance of the late night permit within its jurisdiction.⁶ The late night permit would not allow the sale of liquor after 2 a.m. on Sundays in local units that prohibit alcohol sales after 2 a.m., as provided in sections 1111 and 1113 of the Liquor Control Code.

Sunday Morning Sales Permit

The bill would also create a new Sunday morning special activity permit enabling on-premise and off-premise licensees to sell alcoholic liquor between 7 a.m. and 12 noon (Eastern Time) on Sundays, subject to the approval of the LCC and the local unit of government.⁷ The permit fee would be \$1,500 per year.

Under Section 1111 of the Liquor Control Code, MCL 436.2111, the sale of beer and wine after 2 a.m. on Sundays may be prohibited in any local unit upon a referendum of voters. Otherwise, retailers may begin selling beer and wine after 12 noon EST on Sundays. Section 1113 of the Liquor Control Code, MCL 436.2113, prohibits the sale of spirits and mixed-spirit drinks after 2 a.m. on Sundays, but permits counties, by resolution of the county commission, to authorize the sale of spirits and mixed-spirit drinks after 12 noon.

Under the substitute, the LCC could issue a Sunday morning sales permit upon application from a licensee, subject to prior approval of the local unit (city, village, or township). In practice, upon receipt of the permit application, the LCC would forward the application to the appropriate local unit for its review of the application. After its review, the local government could adopt a resolution approving the Sunday morning sales permit application. [The LCC would not approve the application without prior approval from the local unit.] The local government could also adopt a resolution completely prohibiting the issuance of the Sunday

⁴ Additionally, under the LCC rules, on-premise licensees are prohibited from allowing customers from consuming alcohol after 2:30 a.m. and are prohibited from allowing the licensed premises to be occupied by patrons between 2:30 a.m. and 7:00 a.m. (See, Rule 3 of the LCC On-Premises Licenses Rules, R. 436.1403.) Section 916 of the Liquor Control Code, MCL 436.1916, permits on-premises licensees to obtain (with local approval) an extended hours permit allowing the establishment to remain open after 2:30 a.m. if they offer some sort of "entertainment" or operate a full-service kitchen.

⁵ Presumably, the LCC rules would be amended to prohibit on-premise licensees from allowing patrons to occupy the licensed premises between 4:30 a.m. and 7:00 a.m.

⁶ As introduced, the bill provided that a local unit could restrict the late night permit to one type of license (on-premise or off-premise), or could completely prohibit the issuance of the late night permit. Unlike the substitute, the local unit could not selectively issue (or not issue) a permit to individual licensees.

⁷ Under Section 1114 (MCL 436.2114) of the Liquor Control Code, Sunday alcohol sales may begin after 12 noon Eastern Time. The section notes that in central time zone communities, Sunday sales may also begin after 12 noon Eastern Time, which is 11 a.m. local time. The Sunday morning sales permit essentially provides licensed establishments in the central time zone an additional four hours for liquor sales (7 a.m. to 11 a.m.).

morning sales permit within its jurisdiction.⁸ The Sunday morning sales permit would not allow the sale of liquor after 2 a.m. on Sundays in local units that prohibit alcohol sales after 2 a.m., as provided in sections 1111 and 1113 of the Liquor Control Code.

Distribution of Fee Revenue

Under the substitute, revenue generated from the two new special activity permits would be credited to the Michigan Progress Fund, a fund that does yet exist in statute, but would be established within the Michigan Tobacco Products Tax Act.

FISCAL IMPACT:

Based revised figures provided by the Liquor Control Commission, the late night sales permit would generate an estimated \$2.25 million in revenue on an annual basis, while the Sunday morning sales permit would generate an estimated \$4.8 million in revenue on an annual basis. (This estimate is exclusive of any changes in liquor-related tax revenue that may be affected by changes in consumption behavior due to the increased hours of sales.⁹) Under the substitute, this revenue would be directed to the Michigan Progress Fund, which does not yet exist.¹⁰ The Liquor Control Commission could issue the permits within its spending authorization (\$16.2 million, restricted funds) in FY 2009-10 DELEG Appropriations Act, 2009 PA 130 (SB 243).

Fiscal Analyst: Mark Wolf

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

⁸ As introduced, the bill provided that a local unit could restrict the Sunday morning sales permit to one type of license (on-premise or off-premise), or could completely prohibit the issuance of the late night permit. Unlike the substitute, the local unit could not selectively approve (or disapprove) a permit to individual licensees.

⁹ These include a series of sales taxes and other specific taxes, including, a 4.0% specific tax on distilled spirits credited to the School Aid Fund (MCL 436.2203), a 4% specific tax on distilled spirits credited to the General Fund (MCL 436.2201), a 4% specific tax on distilled spirits credited to the Convention Facilities Development Fund (MCL 436.2207), a 1.85% specific tax on distilled spirits (off-premise licensees only) credited to the Liquor Purchase Revolving Fund (MCL 436.2205), the 6% sales tax on distilled spirits sold to airlines, the 6% use tax on approved consumer imports, a \$6.30/barrel beer tax credited to the General Fund (MCL 436.1409), a \$0.135/liter to \$0.20/liter wine tax credited to the General Fund (MCL 436.1301), and a \$0.48/liter mixed-spirit drink tax credited to the General Fund (MCL 436.1301). See, generally, *2008 Revenue, Sales, and Licensing Statistics*, Michigan Liquor Control Commission, [http://www.michigan.gov/documents/dleg/2008_Stat_Book_288097_7.pdf].

¹⁰ The H-8 Substitute presented before the Committee on Appropriations would have directed fee revenue to the Michigan Future Fund, which is the fund source identified in HB 5403, a FY 2009-10 supplemental appropriations bill providing \$197.8 million in funding for state aid to libraries (\$4.0 million), the Promise Grant Program (\$120.0 million), and statutory revenue sharing (\$73.8 million). An amendment offered by Rep. Alma Smith redirected the permit revenue to the Michigan Progress Fund.