

LIQUOR CATERING PERMIT

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Senate Bill 5 as passed by the Senate
Sponsor: Sen. John Pappageorge
House Committee: Regulatory Reform
Senate Committee: Regulatory Reform

First Analysis (3-24-11)

BRIEF SUMMARY: The bill would create a catering permit allowing certain liquor licensees to sell, deliver, and serve alcohol to events they cater.

FISCAL IMPACT: The bill would increase revenue to the state by an indeterminate amount, as discussed more fully later in the analysis (see *Fiscal Information*).

THE APPARENT PROBLEM:

In general, the state's liquor code separates establishments that sell alcohol into two categories: off-premises licensees who sell to consumers for consumption of the alcohol off the licensed premises (supermarkets and package stores) and on-premises licensees who sell to consumers for consumption on the licensed premises (restaurants and bars).

For example, a Specially Designated Distributor license (SDD) is needed to sell spirits to a consumer for off-premises consumption and Specially Designated Merchant (SDM) licensees can sell beer and wine. A different license is needed to sell alcohol for on-premises consumption. Holders of a Class C or Class B hotel license, such as restaurants and large hotels, can sell beer, wine, and spirits for consumption only on the licensed premises, and holders of a tavern license or Class A hotel license can sell beer and wine. In some cases, a restaurant may be eligible for an SDM license to sell beer or wine to a customer for off-premises use.

The problem attempted to be addressed by the proposed legislation concerns establishments licensed to sell alcohol on and/or off the licensed premises that also provide catering services. Currently, if a host hires an establishment to cater an event that is held at a location other than at the licensed premises, the establishment can supply the food and wait staff, but cannot sell and deliver the alcoholic beverages. Instead, the host or caterer must purchase the alcohol from a retailer with an SDD or SDM license and transport the alcohol to the location of the event. Often, the alcohol is then placed on a table separate from the food where there is little supervision as to who can access it.

Some would like the law changed so that establishments licensed to serve food and liquor and licensed to sell alcohol could provide both at catered events.

THE CONTENT OF THE BILL:

The bill would amend the Liquor Control Code to create a new liquor permit that would allow the sale and delivery of beer, wine, and spirits for off-premise consumption at private events.

The permit holder would have to be a specially designated distributor, specially designated merchant, or a holder of a public on-premise license that is also licensed as a food service establishment.

The permit holder would be required to serve the alcohol, although the alcohol could not be resold to guests at the event, and, before providing the service, would have to successfully complete a server training program approved by the LCC.

Alcohol sold for the event could not be sold at less than the minimum retail selling price fixed by the LCC, and could not be resold (e.g. for consumption by the glass or drink) to guests at the event.

The person delivering the alcohol would have to verify that the individual accepting delivery is at least 21 years of age. The permit holder could utilize the services of a third party to deliver alcohol to private events held in municipalities that are surrounded by water and inaccessible by motor vehicle.

There would be no restriction on the number of catering permits that could be issued within any local unit of government. The holder of a catering permit could use the permit at multiple locations and events during the same time period. However, the permit holder or an employee of the permit holder would have to possess – while delivering the alcohol – documentation that the beer, wine, or spirits being delivered were for a private event conducted under the bill's provisions.

The holder of a catering permit could also sell beer, wine, and spirits to a person who had obtained a special license under Section 527 of the code. (Section 527 allows non-profit charitable organizations to obtain a special license exempt from the payment of taxes under the Internal Revenue Code for the purpose of selling, at auction, wine donated to the organization.)

The holder of a catering permit would be subject to all sanctions, liabilities, and penalties provided under the liquor code or under law.

An applicant for a catering permit would be required to submit an application to the LCC and pay a \$70 application fee. The annual catering permit would be subject to a \$100 permit fee.

MCL 436.1547

HOUSE COMMITTEE ACTION:

The committee reported the Senate-passed version.

BACKGROUND INFORMATION:

The bill is similar to Senate Bill 50 of the 2005-2006 legislative session. That bill was ordered enrolled but vetoed by the governor. Subsequent attempts, whether in stand-alone bills or included in bills addressing multiple liquor issues, were also vetoed, most recently, House Bill 6007 of last session.

FISCAL INFORMATION:

The bill would increase state revenue by an indeterminate amount. The new permit is described as being a "catering permit" although it is not strictly limited to caterers per se, but is available to holders of an SDD license (sale of spirits for off-premise consumption), an SDM license (sale of beer and wine for off-premise consumption), and other public on-premise licensees. Census Bureau data, from 2007, indicates that there are approximately 384 caterers in the state. Using that figure, the bill would result in at approximately \$27,000 in application fee revenue from establishments whose primary business is catering (assuming those businesses would already be licensed liquor retailers, although many may not be). This \$70 application fee would be in lieu of an existing \$70 inspection fee requirement of licensees under Section 529 of the Liquor Control Code upon submitting an application for a new permit. This revenue would be credited to the General Fund.¹ Additionally, the catering permit would also require an annual \$100 permit fee. (The permit would be renewable at the end of April along with other liquor licenses.) Revenue from the catering fee attributable to caterers alone would be around \$38,400. Under Section 543 of the Liquor Control Code, the LCC would retain 41.5% of this revenue (\$15,936), with 55% returned to the applicable local unit of government (\$21,120), and 3.5% remitted to the Department of Community Health for substance abuse prevention programs (\$1,344). With the Senate floor amendment to the bill allowing SDDs to obtain a catering permit, there are approximately 12,000 licensed retailers (on-premise and SDDs) that could be eligible for a catering permit, although the number those licensees that have (or would consider) catering operations isn't known.

ARGUMENTS:

For:

Under current law, a restaurant, hotel, or other establishment that provides catering services can supply the food and wait staff for a private event, and can serve alcohol to guests, but can't supply the alcohol even if it holds a liquor license. This is because a liquor license for on- or off-premises consumption applies only to sales and consumption

¹ The bill doesn't specify a fund source for the application fee revenue. In contrast, the code specifically provides that revenue from the \$70 inspection fee would be credited to the special fund designated in Section 543 of the code and be used to support the LCC's licensing and enforcement activities under the act.

at the establishment's location, not to events catered at a different location. The result is that the beer, wine, and/or spirits must be purchased from a third party.

Some in the restaurant and catering industry feel that the law should be changed so that restaurants and other food service establishments with liquor licenses could also provide alcohol to events that they cater. In addition to streamlining the catering process for these establishments and the host, the bill would also require the permit holder to provide an employee to provide bartending services. Employees of on-premises liquor licensees are trained to check IDs and to refuse service to visibly intoxicated guests. The bill would extend this requirement to employees of off-premises permit holders. Therefore, the bill could minimize situations in which a host who purchases the alcohol sets it up on a table in the corner of the room where there is little to no supervision as to who accesses it.

In addition, all liquor licensees are subject to administrative sanctions for violations of the liquor code and are liable under the Dram Shop Act for injuries that are proximately caused by the service of alcohol, including violations by their employees. This liability would apply even to catered events if the licensee supplied the alcohol and provided the service, meaning that the same attention to comply with liquor laws would be given to off-premises catered events that is given to serving patrons at a restaurant's, hotel's, or other food service establishment's licensed location.

Response:

The Liquor Control Commission requests that the bill not take effect until at least June 1. According to representatives of the MLCC, this time of year is the busiest for the agency as annual renewal applications for all categories of licensees must be received by April 1 and investigated and licenses issued by May. Therefore, a delay in implementation would acknowledge the demands on MLCC staff to process these license renewals, and would avoid any confusion created for establishments regarding applying for a license renewal and applying for the catering permit when the license renewal may already be in process. By June 1 renewal licenses will have been taken care of and MLCC staff will be able to give proper attention to applications for the new catering permits.

Rebuttal:

Some feel that applications for the new catering permit will not be overly burdensome to MLCC to process as not every holder of an on-premises SDD or SDM license has a catering side to its operation.

Against:

The bill could be problematic for the liquor commission and local law enforcement agencies to enforce. Typically, enforcement agents from the commission and/or local law enforcement agencies make random, on-site inspections of on- and off-premises liquor establishments to check for violations of the liquor code such as sales to minors or to visibly intoxicated patrons. Several questions must be raised. For example, how would the off-premises sales and service of alcohol by catering permit holders be monitored for violations? Unless the event was large or advertised, such as a fundraiser, how would the commission or local police even know that an on-premise licensee was providing alcohol at a catered event? And, barring any noise complaints from neighbors,

would police or commission employees have a right to enter a private home or clubhouse where a catered event was in progress to monitor for violations?

POSITIONS:

The Michigan Restaurant Association supports the bill. (3-23-11)

The Michigan Liquor Control Commission testified it supports the bill with some concerns. (3-23-11)

The Michigan Licensed Beverage Association indicated support for the bill. (3-23-11)

The Associated Food & Petroleum Dealers, Inc. indicated support for the bill. (3-23-11)

The Michigan Food & Beverage Association indicated support for the bill. (3-23-11)

The Michigan Grocers Association indicated support for the bill. (3-23-11)

The Michigan Beer & Wine Wholesalers indicated a neutral position on the bill. (3-23-11)

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■ 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.