

ALLOW INTRA-COUNTY TRANSFER OF SDD LICENSES

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House Bill 5140 (as reported without amendment)

Sponsor: Rep. John Walsh

Committee: Regulatory Reform

Complete to 11-13-13

A SUMMARY OF HOUSE BILL 5140 AS REPORTED FROM COMMITTEE 11-12-13

The bill would amend the Liquor Control Code (at MCL 436.1531) to allow for the intra-county transfer of specially designated distributor (SDD) licenses.

[SDD license holders are able to sell spirits and mixed spirit drinks in their original packaging for consumption off the licensed premises. According to the Liquor Control Commission (LCC), the most common businesses with SDD licenses are grocery stores, drug stores, and convenience stores. Currently, SDD licenses can only be transferred within the municipality in which they were originally issued.]

Under the bill, an SDD license could be transferred to an applicant whose proposed operation is located within any local governmental unit in the county in which the SDD license was located. Such a transfer would be subject to the approval of the LCC and the local legislative body. If the local unit of government within which the former licensee's premises were located spans multiple counties, the license could be transferred to an applicant whose proposed operation is located in either county. Transfer of an SDD license would require the consent of the LCC and local legislative approval.

If the SDD license is activated within a local unit of government other than the local unit in which the license was originally issued, the license would count against the quota for the local unit that originally issued the license.

The number of licenses that could be transferred within a county during the first three years after the bill took effect would be capped at 10 in the first year, 20 in the second year, and 30 in the third year.

FISCAL IMPACT:

House Bill 5140 could have an indeterminate, yet likely nominal, fiscal impact on the LCC if it results in an increase in the number of SDD licenses transferred. The LCC would collect and retain SDD transfer fees equal to the application fee for SDD licenses: \$150 plus \$3 for each \$1,000 or major fraction of that amount in excess of \$25,000 of the total retail value of merchandise purchased under the license during the previous calendar year.

POSITIONS:

Associated Food and Petroleum Dealers supports the bill. (11-12-13)

Meijer supports the bill. (11-12-13)

Michigan Beer and Wine Wholesalers Association supports the bill. (11-12-13)

Michigan Brewers Guild supports the bill. (11-12-13)

Michigan Licensed Beverage Association supports the bill. (11-12-13)

Michigan Restaurant Association supports the bill. (11-12-13)

Michigan Liquor Control Commission is neutral on the bill. (11-12-13)

BACKGROUND INFORMATION AND DISCUSSION:

The bill would allow for the intra-county transfer of SDD licenses. Currently, SDD licenses can only be transferred within the municipality where it was issued. According to testimony, SDD licenses are the only licenses whose transfers are restricted to the municipality. Class C licenses, for example, can be transferred anywhere in the county in which it was originally issued.

SDD licenses are issued according to a quota system and once the quota within a municipality is reached, no new SDD licenses may be issued within that municipality. For individuals looking to open a new business in a community that has exhausted its SDD quota, the only option is for the individual to purchase an escrowed license. According to testimony, it can be very difficult to find an escrowed SDD license and there are several municipalities in the state that have exhausted their quota and have very few or no escrowed licenses available. There are currently 241 SDD licenses in escrow and not in use.

To remedy this situation, it has been proposed to allow SDD licenses to be transferred anywhere in the county where the license was issued. SDD licenses are not distributed based on market forces, but rather on population. Intra-county transfer would allow the license market to adapt to population shifts within a county and allow growing municipalities that have exhausted their quota to attract licenses from municipalities that do not have a demand for its SDD licenses.

Additionally, according to testimony, the LCC has started to revoke SDD licenses that have been in escrow for more than five years. Allowing those licenses to be transferred anywhere in the county could help escrowed license holders to more easily sell their licenses instead of having them revoked by the LCC.

There are concerns about whether the bill maintains distance restrictions for SDD transfer licenses in proximity to existing SDD licensees and how local approval of license transfers is being handled. The bill requires an SDD license transfer to be approved by

the local legislative body. However, according to testimony, the LCC has adopted a practice of not asking for local approval for license transfers.

Additionally, transferred licenses would count against the quota of the municipality that originally issued the license if the license is activated in a different municipality. The bill could allow for a municipality to exhaust its quota and yet have few or no SDD establishments because the licenses have been transferred elsewhere in the county. There is also concern that some municipalities could become oversaturated with liquor stores because transferred licenses would not count against the quota of the destination municipality. As a result, a municipality could have several more SDD licenses in operation than is allowed under the current quota system.

The bill establishes a phase-in on the number of licenses that can be transferred within the first three years after enactment. However, it is unclear what would happen after the third year and the bill appears to allow an unlimited number of SDD license transfers after that period.

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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.