



**House  
Legislative  
Analysis  
Section**

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## **LICENSE BREWPUBS**

**House Bill 5407 with amendments  
First Analysis (2-18-92)**

**Sponsor: Rep. Curtis Hertel  
Committee: Liquor Control**

### ***THE APPARENT PROBLEM:***

A brewpub is a place where beer is both brewed and sold for consumption on the premises. It has been described as a kind of theme restaurant or bar where the attractions are the unique specialty beers that are brewed there and sometimes the opportunity to view the brewing process. The beers produced by brewpubs typically are significantly different from the mass-produced light American lager style. Brewpubs have become popular in some parts of the country but are not permitted in Michigan. Michigan has what is known as a three-tier distribution system, which for the most part keeps the manufacturing, distributing, and retailing functions segregated. In other words, brewers cannot own wholesalers or bars, wholesalers cannot own bars or breweries, and bars and restaurants cannot manufacture or wholesale beer. Apparently, there are people interested in developing brewpubs in Michigan, and it has been recommended that an exception be made for brewpubs as a means of helping small businesses and promoting tourism.

### ***THE CONTENT OF THE BILL:***

The bill would amend the Michigan Liquor Control Act to permit the operation and provide for the licensing of brewpubs, establishments where beer is both brewed and sold for consumption on the premises. A brewpub license, under the bill, could only be issued to an establishment that holds a food service establishment license under the Public Health Code and that, at the time of application for a brewpub license, holds an on-premises license under the liquor act (as a Class C establishment, a tavern, a Class A hotel, or a Class B hotel). To maintain a brewpub license, an establishment would have to continue to hold the underlying on-premises license. The brewpub annual licensure fee would be \$100. To obtain a license or renew a license, an establishment would have to provide evidence to the Liquor Control Commission that at least 25 percent of the gross sales of the restaurant during the one-year licensure period were from the sale of food

and non-alcoholic beverages. If the sale on non-alcoholic products fell below that standard for a one-year licensure period, the license would be revoked. Further, no one person could have an interest, directly or indirectly, in more than one brewpub. A brewpub could not manufacture more than 2,000 barrels per year. (An LCC spokesperson has said that a brewpub license would be subject to local approval as with other on-premises licenses.)

The bill would define a brewpub as a license issued "in conjunction with" an on-premises license and authorizing the on-premises license holder to manufacture and sell at the licensed premises not more than 2,000 barrels of beer per year for consumption on those premises only. Beer sold by a brewpub would be subject to the tax on brewers of \$6.30 per barrel. Under the bill, a brewpub could not sell beer unless it provided a label that truthfully described the content of the container in a manner that complies with federal malt beverage regulations, received a registration number from the LCC indicating the commission's approval of the sale of the beer, and used a removable tap marker or sign placed on the draft dispenser and complying with the commission orders relating to its cost. Further, a brewpub would be required to possess the necessary equipment for a satisfactory operation maintained in good working order and in a sanitary condition. Agricultural products processed by a brewpub would have to comply with the laws and rules of the Department of Agriculture.

(Class C licensees can sell beer, wine, and spirits for on-premises consumption. A tavern can sell beer and wine only for on-premises consumption. Class A hotels can sell only beer and wine. Class B hotels can sell beer, wine, and spirits.)

MCL 436.19 et al.

House Bill 5407 (2-18-92)

**FISCAL IMPLICATIONS:**

A Department of Commerce analysis points out that the bill provides for a \$100 licensing fee on brewpubs and a \$6.30 per barrel tax on beer brewed, so there is some revenue potential from the state. The department, however, expects the response to the bill to be "minimal, at least immediately following enactment." (2-11-92)

**ARGUMENTS:****For:**

The bill provides the opportunity for restaurants to become brewpubs, to brew and sell specialty beers for sale on the premises. This is a concept that has been made use of successfully in other parts of the country but is currently prohibited in Michigan. The brewpub concept is appealing to some restaurants as a way of attracting new customers or providing customers with interesting new products, specialty beers not generally available in the mass market. The bill has strict limits. Only establishments already licensed to sell alcohol could get a brewpub license, so it will not increase the number of retail outlets. Local approval will be required, as is the case with all on-premises licenses. Production of beer would be limited to 2,000 barrels per year. A certain amount of food and non-alcoholic beverages must be sold for a business to obtain and retain a brewpub license. No one would be allowed to have an interest in more than one brewpub. All of these provisions mean that this exception in the law is a very limited one and will not affect the integrity of the three-tier distribution system, which aims at keeping apart the manufacturing, wholesaling, and retailing of alcoholic products, and preventing domination of the marketplace.

**Against:**

One small brewer in Michigan has testified in opposition to this bill on the grounds that while it is good for restaurateurs it is harmful to brewers. The bill permits restaurants to become breweries but does not allow small breweries to operate restaurants. Some of the customers that this microbrewery has built up in the past few years are interested in becoming brewpubs, which will reduce the business of the microbrewery. There at least ought to be a delay in implementing this new law to allow the small brewer to secure new markets and the prospective brewpubs to learn the business. Otherwise, an existing business will be harmed and the new businesses could start up but fail. Also, fair

treatment for the small brewer requires an increase in the number of "tasting rooms" to equal those allowed to wineries and an end to the subsidization of the state's wine industry.

**Against:**

It should be noted that this bill does conflict with the traditional separation in the liquor law of manufacturing, wholesaling, and retailing of alcoholic beverages.

**Response:**

Some people would question whether the traditional separation of functions is sensible or acceptable economic regulation. Certainly, the restrictions in this bill on brewpubs are strict and unusual; for example, limiting the amount of beer that can be produced.

**POSITIONS:**

The Department of Commerce, which houses the Liquor Control Commission, supports the bill. (2-12-92)

The Michigan Restaurant Association supports the bill. (2-12-92)

The Michigan Beer and Wine Wholesalers Association is neutral on the bill. (2-12-92)

A spokesperson from the Kalamazoo Brewing Company testified in opposition to the bill. (2-12-92)