



**House  
Legislative  
Analysis  
Section**

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**LICENSE BREWPUBS**

House Bill 5407 as enrolled  
Second Analysis (12-14-92)

Sponsor: Rep. Curtis Hertel  
House Committee: Liquor Control  
Senate Committee: State Affairs and  
Military/Veteran Affairs

***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 do the following:

-- permit the operation and provide for the licensing of brewpubs. These are 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. Brewpubs would be limited to manufacturing 2,000 barrels per year on the

premises. Beer sold by brewpubs would be subject to the barrel tax on breweries.

(Note: 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.)

-- allow "micro brewers" to sell beer they produce for on-premises or off-premises consumption. A micro brewer would be defined as a brewer that produces in total less than 20,000 barrels of beer per year. (All brands and labels would be taken into account in determining eligibility, whether brewed in Michigan or elsewhere, and all facilities owned or controlled by the same person would be treated as a single facility.)

-- extend indefinitely the \$2 per barrel tax credit permitted to certain small brewers (against the \$6.30 per barrel brewer's tax) and increase the number of barrels brewers could produce and still qualify for the credit. The credit would be available to a brewer manufacturing under 20,000 barrels during the tax year for which the credit is claimed. The tax credit is currently authorized for tax years 1989 through 1991 and only for brewers making under 5,000 barrels.

Brewpub 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

House Bill 5407 (12-14-92)

have an interest, directly or indirectly, in more than one brewpub.

Under the bill, a brewpub could not sell beer unless it provided a label for each brand or type of beer sold truthfully describing the content of each container, met other federal malt beverage labeling and manufacturing requirements, and held a "brewers notice" issued by the federal Bureau of Alcohol, Tobacco, and Firearms. 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.

MCL 436.19 et al.

### ***FISCAL IMPLICATIONS:***

A Department of Commerce analysis (dated 2-11-92) 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." The extension and expansion of the tax credit for small brewers would result in a "minimal" loss of revenue to the state, according to the Senate Fiscal Agency. Each of Michigan's three breweries (Frankenmuth, Kalamazoo, and Detroit/Mackinac) qualifies for the credit. The SFA says, "It is possible that only 50,000 (or fewer) additional barrels of beer sold in Michigan would be subject to this tax credit, resulting in a maximum yearly decrease of \$100,000 to the State General Fund." (11-2-92)

### ***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. The bill also allows microbreweries to sell beer for consumption on or off the premises (and extends a tax credit aimed at such small breweries), so that they will not be at a competitive disadvantage.

#### ***Against:***

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

#### ***Response:***

Some people would question whether the traditional separation of functions is sensible or acceptable economic regulation. In any case, this is a relatively minor exception and the restrictions on brewpubs are quite strict and unusual; for example, they limit the amount of beer that can be produced.