

Act No. 282
Public Acts of 1998
Approved by the Governor
July 26, 1998
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July 27, 1998
EFFECTIVE DATE: July 27, 1998

STATE OF MICHIGAN
89TH LEGISLATURE
REGULAR SESSION OF 1998

Introduced by Reps. Bodem, McBryde, Gilmer, Gernaat and Prusi
Reps. Anthony, Crissman, Dobb, Kukuk, Law and Vaughn named co-sponsors

ENROLLED HOUSE BILL No. 4332

AN ACT to amend 1998 PA 58, entitled "An act to create a commission for the control of the alcoholic beverage traffic within this state, and to prescribe its powers, duties, and limitations; to provide for powers and duties for certain state departments and agencies; to impose certain taxes for certain purposes; to provide for the control of the alcoholic liquor traffic within this state and to provide for the power to establish state liquor stores; to provide for the care and treatment of alcoholics; to provide for the incorporation of farmer cooperative wineries and the granting of certain rights and privileges to those cooperatives; to provide for the licensing and taxation of activities regulated under this act and the disposition of the money received under this act; to prescribe liability for retail licensees under certain circumstances and to require security for that liability; to provide procedures, defenses, and remedies regarding violations of this act; to provide for the enforcement and to prescribe penalties for violations of this act; to provide for allocation of certain funds for certain purposes; to provide for the confiscation and disposition of property seized under this act; to provide referenda under certain circumstances; and to repeal acts and parts of acts," by amending sections 521 and 531 (MCL 436.1521 and 436.1531) and by adding section 522.

The People of the State of Michigan enact:

Sec. 521. (1) In addition to any licenses for the sale of alcoholic liquor for consumption on the premises that may be available in the local governmental unit under section 531(1), and the resort and resort economic development licenses authorized in section 531(2), (3), and (4), the commission may issue not more than 50 tavern or class C licenses to persons who operate businesses that meet all of the following conditions:

- (a) The business is a full service restaurant, is open to the public, and prepares food on the premises.
- (b) The business is open for food service not less than 10 hours per day, 5 days a week.
- (c) At least 50% of the gross receipts of the business are derived from the sale of food for consumption on the premises. For purposes of this subdivision, food does not include beer and wine.
- (d) The business has dining facilities to seat not less than 25 persons.
- (e) The business is located in a development district with a population of not more than 50,000, in which the authority, after a public hearing, has found that the issuance of the license would prevent further deterioration within the development district and promote economic growth within the development district. The commission shall not issue the license unless the local unit of government within which the authority is located, after holding a public hearing, passes a resolution concurring in the findings of the authority.

(2) The individual signing the application for the license shall state and demonstrate that the applicant attempted to secure an appropriate on-premise escrowed license or quota license issued under section 531 and that, to the best of his

or her knowledge, an on-premise license or quota license issued under section 531 is not readily available within the local unit of government in which the applicant proposes to operate.

(3) If in any licensing year the sale of food for consumption on the premises of the business represents less than 50% of the gross receipts for the business, the commission, after due notice and proper hearing, shall revoke the license issued under subsection (1).

(4) Not more than 1 license shall be issued under subsection (1) to any individual, partnership, limited partnership, limited liability company, corporation, or any combination of any of the above, including stockholders, general partners, or limited partners. A license issued under this section is transferable as to ownership or location only within the development district.

(5) The commission shall not issue a specially designated merchant license, specially designated distributor license, or any other license that allows the sale of alcoholic liquor for consumption off the premises in conjunction with a license issued under subsection (1) or at the premises for which a license has been issued under subsection (1).

(6) The commission shall not issue a license under this section if the local governmental unit within which the development district is located has not issued all appropriate on-premise licenses available under section 531(1) or if an appropriate on-premise escrowed license is readily available in any local unit of government in which the development district is located. The commission shall not issue more than 2 licenses authorized under this section in any city or municipality with a population greater than 50,000. If an applicant's proposed location is within more than 1 development district, the applicant shall obtain the approval of both or all of the applicable local units of government or development districts.

(7) The commission may issue the licenses under this section without regard to the order in which the applications for the licenses are received.

(8) The commission shall annually report to the legislature the names of the businesses issued licenses under this section and their locations.

(9) As used in this section:

(a) "Development district" means any of the following:

(i) An authority district established under the tax increment finance authority act, 1980 PA 450, MCL 125.1801 to 125.1830.

(ii) An authority district established under the local development financing act, 1986 PA 281, MCL 125.2151 to 125.2174.

(iii) A downtown district established under 1975 PA 197, MCL 125.1651 to 125.1681.

(iv) A principal shopping district established under 1961 PA 120, MCL 125.981 to 125.987, before January 1, 1996.

(b) "Escrowed license" means a license in which the rights of the licensee in the license or to the renewal of the license are still in existence and are subject to renewal and activation in the manner provided for in R 436.1107 of the Michigan administrative code.

(c) "Readily available" means available under a standard of economic feasibility, as applied to the specific circumstances of the applicant, that includes, but is not limited to, the following:

(i) The fair market value of the license, if determinable.

(ii) The size and scope of the proposed operation.

(iii) The existence of mandatory contractual restrictions or inclusions attached to the sale of the license.

Sec. 522. (1) The commission may issue 1 banquet facility permit to an on-premise licensee, as an extension of that on-premise license, for the serving of alcoholic liquor only on the permitted premises. This section does not limit the number of banquet facility permits that the commission may issue within any local unit of government. The banquet facility shall be used only for scheduled functions and events, shall not have regular meal service, and shall not be generally open to the public. The applicant shall provide documentation that demonstrates a preexisting ownership or lease interest in the banquet facility.

(2) The commission shall charge an initial permit issuance fee and, upon renewal of the permit, a permit renewal fee sufficient to cover the cost of administering the issuance and renewal of the permit. The fees shall be established through promulgation of a rule.

(3) The banquet facility permit expires on the same date as the on-premise license and may be renewed in conjunction with that license. The commission shall issue the permit only to a licensee to which the following apply:

(a) The licensee does not have a record of any prior offenses or violations that the commission considers to be of such a nature as to pose a threat to the general public if a permit is issued.

(b) The licensee has demonstrated to the commission that at least 75% of the gross receipts of the on-premise license are derived from the sale of food and nonalcoholic beverages prepared for consumption on the licensed premises.

(4) The licensee shall apply on forms provided by the commission and provide information considered necessary by the commission to protect the public interest and welfare including, but not limited to, a diagram of the premises and evidence that the premises meets local safety, building, and health codes.

(5) The commission shall not issue a banquet facility permit unless issuance is approved through adoption of a resolution of the legislative body of the local unit of government within which the permitted facility is located.

Sec. 531. (1) A public license shall not be granted for the sale of alcoholic liquor for consumption on the premises in excess of 1 license for each 1,500 of population or major fraction thereof. On-premise escrowed licenses issued under this subsection are available subject to local legislative approval under section 501(2) to an applicant whose proposed operation is located within any local governmental unit in a county with a population of under 500,000 or a county with a population of over 700,000 in which the escrowed license was located. If the local governmental unit within which the former licensee's premises were located spans more than 1 county, an escrowed license is available subject to local legislative approval under section 501(2) to an applicant whose proposed operation is located within any local governmental unit in either county. If an escrowed license is activated within a local governmental unit other than that local governmental unit within which the escrowed license was originally issued, the commission shall count that activated license against the local governmental unit originally issuing the license. This quota does not bar the right of an existing licensee to renew a license or transfer the license and does not bar the right of a tavern or class A hotel from requesting reclassification of a license to class C, unless local option laws prevent the sale of spirits and mixed spirit drinks by those licensed premises, subject to the consent of the commission. The upgrading of a license resulting from a request under this subsection shall be approved by the local governmental unit having jurisdiction.

(2) In a resort area, the commission may issue 1 or more licenses for a period not to exceed 12 months without regard to a limitation because of population, but not in excess of 550, and with respect to the resort license the commission, by rule, shall define and classify resort seasons by months and may issue 1 or more licenses for resort seasons without regard to the calendar year or licensing year.

(3) In addition to the resort licenses authorized in subsection (2), the commission may issue not more than 10 additional licenses for the year 1998 to establishments whose business and operation, as determined by the commission, is designed to attract and accommodate tourists and visitors to the resort area and whose primary purpose is not for the sale of alcoholic liquor. In counties having a population of less than 50,000, as determined by the last federal decennial census or as determined pursuant to subsection (11) and subject to subsection (17) in the case of a class A hotel or a class B hotel, the commission shall not require the establishments to have dining facilities to seat more than 50 persons. The commission may cancel the license if the resort is no longer active or no longer qualifies for the license. Before January 16 of each year the commission shall transmit to the legislature a report giving details as to the number of applications received under this subsection; the number of licenses granted and to whom; the number of applications rejected and the reasons; and the number of the licenses revoked, suspended, or other disciplinary action taken and against whom and the grounds for revocation, suspension, or disciplinary action.

(4) In addition to any licenses for the sale of alcoholic liquor for consumption on the premises that may be available in the local governmental unit under subsection (1) and the resort licenses authorized in subsections (2) and (3), the commission may issue not more than 25 additional resort economic development licenses per year for the year 1998. A person is eligible to apply for a resort economic development license under this subsection upon submitting an application to the commission and demonstrating all of the following:

(a) The establishment's business and operation, as determined by the commission, is designed to attract and accommodate tourists and visitors to the resort area.

(b) The establishment's primary business is not the sale of alcoholic liquor.

(c) The capital investment in real property, leasehold improvement, fixtures, and inventory for the premises to be licensed is in excess of \$1,500,000.00.

(5) In governmental units having a population of 50,000 persons or less, as determined by the last federal decennial census or as determined pursuant to subsection (11), in which the quota of specially designated distributor licenses, as provided by commission rule, has been exhausted, the commission may issue not more than 10 additional specially designated distributor licenses per year for the year 1998 to established merchants whose business and operation, as determined by the commission, is designed to attract and accommodate tourists and visitors to the resort area. A specially designated distributor license issued pursuant to this subsection may be issued at a location within 2,640 feet of existing specially designated distributor license locations. A specially designated distributor license issued pursuant to this subsection shall not bar another specially designated distributor licensee from transferring location to within 2,640 feet of said licensed location. A specially designated distributor license issued pursuant to R 436.1141 of the Michigan administrative code may be located within 2,640 feet of a specially designated distributor license issued pursuant to this subsection.

(6) In addition to any licenses for the sale of alcoholic liquor for consumption on the premises that may be available in the local governmental unit under subsection (1), and the resort or resort economic development licenses authorized in subsections (2), (3), and (4), and notwithstanding section 519, the commission may issue not more than 5 additional

special purpose licenses in any calendar year for the sale of beer and wine for consumption on the premises. A special purpose license issued pursuant to this subsection shall be issued only for events which are to be held from May 1 to September 30, are artistic in nature, and which are to be held on the campus of a public university with an enrollment of 30,000 or more students. A special purpose license shall be valid for 30 days or for the duration of the event for which it is issued, whichever is less. The fee for a special purpose license shall be \$50.00. A special purpose license may be issued only to a corporation which is all of the following:

(a) Is a nonprofit corporation organized pursuant to the nonprofit corporation act, 1982 PA 162, MCL 450.2101 to 450.3192.

(b) Has a board of directors constituted of members of whom half are elected by the public university at which the event is scheduled and half are elected by the local governmental unit.

(c) Has been in continuous existence for not less than 6 years.

(7) Notwithstanding the local legislative body approval provision of section 501(2) and notwithstanding the provisions of section 519, the commission may issue, without regard to the quota provisions of subsection (1) and with the approval of the governing board of the university, either a tavern or class C license which may be used only for regularly scheduled events at a public university's established outdoor program or festival at a facility on the campus of a public university having a head count enrollment of 10,000 students or more. A license issued under this subsection may only be issued to the governing board of a public university, a person that is the lessee or concessionaire of the governing board of the university, or both. A license issued under this subsection is not transferable as to ownership or location. A license issued under this subsection may not be issued at an outdoor stadium customarily used for intercollegiate athletic events.

(8) In issuing a resort or resort economic development license under subsection (3), (4), or (5), the commission shall consider economic development factors of the area in the issuance of licenses to establishments designed to stimulate and promote the resort and tourist industry. The commission shall not transfer a resort or resort economic development license issued under subsection (3), (4), or (5) to another location. If the licensee goes out of business the license shall be surrendered to the commission.

(9) The limitations and quotas of this section are not applicable to the issuance of a new license to a veteran of the armed forces of the United States who was honorably discharged or released under honorable conditions from the armed forces of the United States and who had by forced sale disposed of a similar license within 90 days before or after entering or while serving in the armed forces of the United States, as a part of the person's preparation for that service if the application for a new license is made for the same governmental unit in which the previous license was issued and within 60 days after the discharge of the applicant from the armed forces of the United States.

(10) The limitations and quotas of this section shall not be applicable to the issuance of a new license or the renewal of an existing license where the property or establishment to be licensed is situated in or on land on which an airport owned by a county or in which a county has an interest is situated.

(11) For purposes of implementing this section a special state census of a local governmental unit may be taken at the expense of the local governmental unit by the federal bureau of census or the secretary of state under section 6 of 1909 PA 279, MCL 117.6. The special census shall be initiated by resolution of the governing body of the local governmental unit involved. The secretary of state may promulgate additional rules necessary for implementing this section pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

(12) Before granting an approval as required in section 501(2) for a license to be issued under subsection (2), (3), or (4), a local legislative body shall disclose the availability of transferable licenses held in escrow for more than 1 licensing year within that respective local governmental unit. Public notice of the meeting to consider the granting of the license by the local governmental unit shall be made 2 weeks before the meeting.

(13) The person signing the application for an on-premise resort or resort economic development license shall state and verify that he or she attempted to secure an on-premise escrowed or quota license and that, to the best of his or her knowledge, an on-premise escrowed or quota license is not readily available within the local governmental unit in which the applicant for the on-premise resort or resort economic development license proposes to operate.

(14) The commission shall not issue an on-premise resort or resort economic development license if the local governmental unit within which the resort or resort economic development license applicant proposes to operate has not issued all on-premise licenses available under subsection (1) or if an on-premise escrowed license exists and is readily available within the local governmental unit in which the applicant for the on-premise resort or resort economic development license proposes to operate. The commission may waive the provisions of this subsection upon a showing of good cause.

(15) The commission shall annually report to the legislature the names of the businesses issued licenses under this section and their locations.

(16) The commission shall not require a class A hotel or a class B hotel licensed pursuant to subsection (2), (3), or (4) to provide food service to registered guests or to the public.

(17) As used in this section:

(a) "Escrowed license" means a license in which the rights of the licensee in the license or to the renewal of the license are still in existence and are subject to renewal and activation in the manner provided for in R 436.1107 of the Michigan administrative code.

(b) "Readily available" means available under a standard of economic feasibility, as applied to the specific circumstances of the applicant, that includes, but is not limited to, the following:

(i) The fair market value of the license, if determinable.

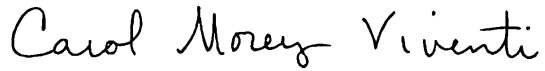
(ii) The size and scope of the proposed operation.

(iii) The existence of mandatory contractual restrictions or inclusions attached to the sale of the license.

This act is ordered to take immediate effect.



Clerk of the House of Representatives.



Secretary of the Senate.

Approved -----

Governor.