

Legislative Analysis



CREATE CATERING PERMIT FOR OFF-PREMISES SALES OF ALCOHOL BY ON-PREMISES LICENSEES

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Senate Bill 50 as passed by the Senate

Sponsor: Sen. Shirley Johnson

House Committee: Regulatory Reform

Senate Committee: Economic Development, Small Business and Regulatory Reform

First Analysis (7-26-06)

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

FISCAL IMPACT: The Liquor Control Commission's Annual Report for Fiscal Year 2005 indicates there were approximately 7,400 on-premise licensees who would be eligible for the catering permit created under this bill. The number of licensees who would elect to purchase the \$300 permit and also pay the \$70 application fee is not currently determinable. However, it seems likely that this bill will increase State of Michigan liquor license revenue by at least \$300,000 annually. This revenue should be sufficient to offset any additional administrative costs.

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 and on-premises licensees who sell to consumers for consumption on the licensed premises.

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 on-premises establishments that provide catering services. Currently, if a host hires a restaurant to cater an event that is held at a location other than at the restaurant, the restaurant can supply the food and wait staff, but cannot sell and deliver alcoholic beverages, even if the restaurant holds a Class C or tavern license. 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 could also provide alcohol in addition to providing food at catered events.

THE CONTENT OF THE BILL:

Senate Bill 50 would add a new section to the Michigan Liquor Control Code to create a blended permit for catering whereby an on-premises licensee could also sell beer, wine, and spirits for off-premises consumption, under certain conditions. An on-premises licensee who was licensed to sell beer, wine, or spirits for on-premises consumption only, and who was also licensed as a food service establishment under the Food Law of 2000, would be eligible for a catering permit (in general, Class C, tavern, and Class A and B hotel licensees). A catering permit would enable the permit holder to sell and deliver beer, wine, or spirits – in the original sealed container – to a person for off-premises consumption so long as the sale was not by glass or drink and required the permit holder to provide the service of the spirits.

The commission could not issue a catering permit to an applicant whose food service establishment delivered beer, wine, and spirits but did not provide for the service of the alcohol. Issuance of a catering permit would not allow the permit holder to deliver beer, wine, or spirits without serving the beer, wine, and spirits.

The bill would specify the following:

- The Liquor Control Commission could issue a catering permit to a public on-premises licensee (e.g., this would exclude clubs) as a supplement to the on-premises license. The permit would allow the on-premises licensee to sell and deliver wine, beer, and spirits in the original sealed container to off-premises locations.
- A catering permit would require the holder to provide for service of the beer, wine, or spirits at the private event where the alcoholic beverages could not be resold to guests.
- Spirits sold by a catering permit holder could not be sold at less than the minimum retail price fixed by the Liquor Control Commission under commission rules for package liquor stores (SDD licensees).
- 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.
- 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.

The initial application and processing fee would be \$70 and the permit fee would be \$300. The on-premises licensee could renew the permit annually for \$300 at the same time the on-premises license was renewed.

MCL 436.1545

HOUSE COMMITTEE ACTION:

The committee reported out the Senate-passed version of the bill.

ARGUMENTS:

For:

Under current law, a restaurant or hotel that also provides catering services can supply the food and wait staff for an 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-premises consumption applies only to sales and consumption at the restaurant'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 industry feel that the law should be changed so that restaurants with liquor licenses could also provide alcohol to events that they cater. In addition to streamlining the catering process for the restaurant and the host, the bill would also require the restaurant 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. 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, 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 the restaurant's or hotel's licensed location.

Against:

Enactment of the bill would allow some on-premises liquor licensees (bars, restaurants, and hotels) to encroach on the territory currently reserved for SDD licensees selling spirits (package and grocery stores) and SDM licensees selling beer and wine (gas stations, drug stores, etc.). Most SDD licensees also hold an SDM license. Alcohol sales for parties, birthdays, anniversaries, political fundraisers, and other events account for 19

percent of the business for SDD licensees. Some restaurants also hold an SDM license, but sales of beer and wine for off-premises consumption currently account for only a small amount of their business; therefore, they have not pulled a significant amount of business away from retail stores.

The bill, however, could drastically affect the ability of some SDD and SDM licensees to generate enough sales to stay in business, as many could not survive a loss of one-fifth of their annual revenue. Especially hard hit would be mom and pop establishments that could be negatively affected even by a small loss of annual revenue. In addition, on-premises licensees are able to purchase spirits at a lower price from the liquor commission than the off-premises retailers. Thus, restaurants and bars eligible for the catering permit stand to make more money on the sale of spirits to catering customers because the bill requires them to charge at least the amount the commission charges the off-premises licensees. This is an unfair economic advantage that would be given to on-premises licensees. The current system, which protects the business interests of both on-premises and off-premises licensees, should be protected and not abandoned for a system that could work to the economic advantage of on-premises licensees at the expense of off-premises licensees.

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-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 on-premises licensees with a catering permit 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?

Lastly, opponents of the legislation feel the bill may not be valid because it conflicts with the liquor code's restrictions on the proximity of one SDD licensee to another. Some maintain that the catering permit is, in effect, an SDD license (allowing those with a Class C or Class B hotel license to sell spirits for off-premises consumption), and current law prohibits an individual from obtaining an SDD license within one-half mile of another SDD license holder. Under current law, therefore, a restaurant or hotel with a Class C license located within one-half mile of a package store or grocery store that sells spirits should be denied a catering permit. To do otherwise could be seen as legislatively picking winners and losers. However, it is unclear at this time how the bill would be interpreted by the commission or the courts.

POSITIONS:

A representative of the Michigan Restaurant Association testified in support of the bill. (7-26-06)

A representative of Dusty's Cellar testified in support of the bill. (7-26-06)

A representative of Fox Y Hounds testified in support of the bill. (7-26-06)

The Michigan Grocers Association indicated support for the bill. (7-26-06)

The Michigan Food and Beverage Association indicated support for the bill. (7-26-06)

The Michigan Liquor Control Commission is neutral on the bill. (7-26-06)

The Michigan Licensed Beverage Association indicated neutrality on the bill. (7-26-06)

The Associated Food and Petroleum Dealers, Inc. testified in opposition to the bill. (7-26-06)

Legislative Analyst: Susan Stutzky
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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.