

Legislative Analysis



SAMPLING OF HOME BREWED BEER AT BREW PUBS & MICRO BREWERIES

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House Bill 4061 (Substitute H-2)
Sponsor: Rep. Douglas Geiss
Committee: Regulatory Reform

First Analysis: 6-22-11

BRIEF SUMMARY: House Bill 4061 (H-2) would amend the Liquor Control Code to allow brew pubs and micro-breweries to provide samples of beer on the licensed premise that have been produced by a home brewer. The samples would have to be provided at a meeting of home brewers or at a club composed primarily of home brewers, as long as the samples met the conditions as specified in the bill.

FISCAL IMPACT:

If the bill were to allow home brewers to remove their product from their home and allow their product to be consumed at licensed microbreweries and brewpubs and still allow home brewers to remain "excepted" from the Liquor Control Code under Section 207, the bill would have no state or local fiscal impact. The Liquor Control Commission would enforce this provision, as it does other provisions of the Code, although enforcement could prove to be difficult for the agency.

THE APPARENT PROBLEM:

Currently, a person cannot conduct samplings or tastings of any alcoholic liquor for a commercial purpose except at a location that is licensed by the Liquor Control Commission for the sale and consumption of liquor on the premises. On-premises retailers may allow customers to sample beer, wine, and distilled spirits as long as the retailer does not charge for the samples and the samples meet the size requirements of the statute.

As home brewing has become more popular, local clubs have outgrown the garages and sheds they met in and many have sought larger facilities. Brew pubs and micro-breweries seemed like a logical fit and many have allowed homebrew clubs to meet on their premises to conduct meetings. These meetings often consist of sampling each other's latest batch of home brewed beer, swapping recipes and techniques, and holding competitions among club members. However, the Liquor Control Code does not allow for on-premises licensees to provide samples of beer it has not brewed itself. By allowing home brew clubs to meet and distribute samples on its premises, the licensed establishments are in violation of the terms of their license. This bill seeks to create an exemption to allow this type of activity under the Liquor Control Code.

THE CONTENT OF THE BILL:

This bill would amend Section 1027 of the Liquor Control Code so that a micro brewer, brewpub, or on-premises licensee could allow for the sampling and consumption on its licensed premises of beer, wine, honey-based beer, or cider produced by one or more home brewers at a meeting of home brewers, or a club composed primarily of home brewers, provided the following conditions are met:

- The sampling or consumption is for the purpose of exhibitions or competitions involving home brewers.
- Samples of beer, honey-based beer, or cider do not exceed three ounces and samples of wine or mead do not exceed two ounces.
- The sample produced by a home brewer is only consumed by the home brewer, the home brewer's family, a club member, a judge, or a guest speaker and is **not** sold to members of the general public.
- The participants in the sampling comply with applicable state and federal law, applicable regulatory provisions of the Liquor Control Code, and rules adopted by the Liquor Control Commission.
- The participants in the sampling are **not** charged for the sampling of the beer, wine, mead, honey-based beer, or cider.

This bill would define "*home brewer*" as an individual who manufactures beer, wine, mead, honey-based beer, or cider at his or her dwelling.

MCL 436.2027

BACKGROUND INFORMATION:

Definitions of Important Terms. The following are definitions from the Liquor Control Code.

- "*Brewpub*" means a license issued in conjunction with a class C, tavern, class A hotel, or class B hotel license that authorizes the person licensed with the class C, tavern, class A hotel, or class B hotel to manufacture and brew not more than 5,000 barrels of beer per calendar year in Michigan and sell at those licensed premises the beer produced for consumption on or off the licensed brewery premises in the manner provided for in Sections 405 and 407.
- "*Micro brewer*" means a brewer that produces in total less than 30,000 barrels of beer per year and that may sell the beer produced to consumers at the licensed brewery premises for consumption on or off the licensed brewery premises. In determining the 30,000-barrel threshold, all brands and labels of a brewer, whether brewed in this state or outside this state, shall be combined and all facilities for the production of beer that are owned or controlled by the same person shall be treated as a single facility.

Home brewing History. Home brewing is legal in many countries around the world and was legalized in the United States in 1978, although it is up to individual states to regulate it. It is currently legal in 48 states.¹ The American Homebrewing Association (AHA) estimates there are 750,000 Americans who homebrew at least once a year. The majority of these home brewers enter competitions around the United States. According to the AHA there are nearly 300 homebrew competitions held annually.

For more information on home brewing please visit the American Homebrewers Association (AHA) at www.homebrewersassociation.org.

Federal Exemption. 27 CFR 25.205-25.206 allows home brewers to remove home brewed beer from the premises at which it was brewed, provided it is to be used for personal or family use, including organized affairs, exhibitions, or competitions. It does not allow for it to be sold or offered for sale. However, individual states are responsible for regulating the use of alcohol within their borders.

ARGUMENTS:

For:

Home brewing beer has become popular through the United States and clubs have grown too large to meet at member's homes. Many are already meeting at businesses licensed for on-premises consumption. This legislation provides protection under the Liquor Control Code for those businesses. Committee testimony noted that most owners of brew pubs and micro-breweries started as home brewers. This allows homebrew clubs to continue to grow and provides an atmosphere for small businesses to grow.

Currently, federal law allows for homebrewed beer to be removed from the premises at which it was brewed, provided it is to be used for exhibitions and competitions. This bill would seem to follow in the spirit of the federal exemption, to allow for home brewed beer to be sampled at a meeting of home brewers at an establishment licensed for on-premises consumption.

Against:

It appears a "home brewer" as defined by House Bill 4061 (H-2) may not be a "home brewer" under existing Liquor Control Code exceptions in Sec. 207(b). Sec. 207(b) provides an exception for licensure for "beer, wine, mead, honey-based beer, or cider of any alcoholic content made on the premises by the owner or lessee of those premises provided those premises are used and occupied by that owner or lessee as a dwelling and the beer, wine, mead, honey-based beer, or cider is for family use and home consumption." It may be possible that allowing homebrewed beer to be consumed on the premises of a micro-brewery or brewpub could remove the exception home brewers currently have under Liquor Control Code, since the home brew would no longer be used for *family use and home consumption*.

In March of 2011, Oregon enacted legislation that legalized home brew competitions. After many years of allowing home brew competitions, the Oregon Liquor Control

¹ The only states that do not currently allow home brewing are Mississippi and Alabama.

Commission, based on an Oregon Department of Justice opinion, declared the competitions illegal without proper licenses. According to the opinion, "for 'home consumption,' means that the homebrewed alcoholic liquor must be consumed at home. Homebrewers lose their exemption under ORS 471.403(1) when the homebrew is consumed outside the home."²

Response:

As noted, Sec. 207(b) provides an exception from the Code for "beer, wine, mead, honey-based beer, or cider of any alcoholic content made on the premises by the owner or lessee of those premises provided those premises are used and occupied by that owner or lessee as a dwelling and the beer, wine, mead, honey-based beer, or cider is for *family use and home consumption*." However, Sec. 207(c) allows gifts of beer, wine, mead, honey-based beer, or cider to individuals for non-commercial use or consumption, provided the gifts do not exceed 20 gallons. It could be argued that, in such cases, beer, wine, mead, honey-based beer, and cider made by a home brewer was not intended only *for family use and home consumption* but was intended to be consumed at other locations.

It is important to note that this bill would only allow samples to be given for the purpose of exhibitions or competitions, not during a general meeting of the group. There is no definition in the Liquor Control Code or in House Bill 4061 for "exhibition" or "competition" and this brings up the question of whether general meetings of a homebrew club would be covered under this legislation.

There are also concerns about liability when on-premises licensees allow for someone other than the business to distribute samples on its premises.

POSITIONS:

Multiple home brewers testified in support of the bill. (6-15-11)

The Michigan Liquor Control Commission is neutral on the bill. (6-15-11)

Michigan Beer & Wine Wholesalers Association is neutral on the bill. (6-15-11)

Michigan Licensed Beverage Association is neutral on the bill. (6-15-11)

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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.

² The full text of the Oregon Department of Justice's opinion can be accessed at http://www.portlandmercury.com/images/blogimages/2010/07/15/1279213168-justice-_2119571-v2-olcc__homebrew_beer__wine_competitions_1.pdf.