

Legislative Analysis



REVISIONS TO MICHIGAN LIQUOR CODE RELATING TO BREWERS, MICROBREWERS, AND BREWPUBS

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House Bill 4709 (as enacted)
Public Act 42 of 2014
Sponsor: Rep. Kevin Cotter

House Bill 4710 (as enacted)
Public Act 43 of 2014
Sponsor: Rep. Peter MacGregor

House Bill 4711 (as enacted)
Public Act 44 of 2014
Sponsor: Rep. Andy Schor

House Committee: Regulatory Reform
Senate Committee: Regulatory Reform

ANALYSIS OF THE BILLS AS ENACTED (Complete to 4-10-14)

BRIEF SUMMARY: Taken together, the bills amend the Liquor Control Code to (1) increase the number of barrels of beer a microbrewer could produce in a year, (2) allow brewpubs to have an interest in up to five other brewpubs, and (3) allow brewers to sell the beer they make for on-premises consumption at multiple licensed brewery premises.

FISCAL IMPACT: House Bills 4709-4711 would have an indeterminate fiscal impact on the Michigan Liquor Control Commission (LCC) and state excise tax collections depending on how the changes to production restrictions and consumption regulations affect the demand for brewer, microbrewer, and brewpub licenses and the supply of Michigan-produced beer. For additional information, see *Fiscal Information*, later in the analysis.

THE APPARENT PROBLEM:

According to testimony, the aim of the bills is to make changes to the Liquor Control Code to accommodate expansion of the state's craft brewing industry. The original production caps and benefits afforded to craft brewers were intended to protect the industry from competition from large brewers (for example, MillerCoors and Anheuser-Busch). As the industry has grown, brewers, brewpubs, and microbrewers are getting close to reaching the production caps and other statutory limits.

Increasing production caps and allowing brewpubs and breweries to expand to more locations will allow the industry to continue growing without changing the concepts of the individual licenses. Additionally, some expressed concern that the production caps in current law had been set arbitrarily and should be increased to accommodate the expansion of the industry.

THE CONTENT OF THE BILL:

House Bill 4709 amended the definition of "microbrewer" to increase the amount of beer such a business can brew and still be considered a microbrewer from 30,000 to 60,000 barrels per year. (MCL 436.1109)

House Bill 4710 allows a brewpub to have an interest in up to five other brewpubs as long as the combined production of all the locations in which the brewpub has an interest does not exceed 18,000 barrels of beer in a calendar year. Under previous law, brewpubs were limited to an interest in up to two other brewpubs if the combined production did not exceed 5,000 barrels of beer per calendar year. (MCL 436.4603)

House Bill 4711 allows *a brewer not licensed as a microbrewer* to sell its beer for on-premises consumption at up to two locations in Michigan on any of its licensed brewery premises where the brewer is engaged in the production of beer. Previously, a brewer can only sell its beer for on-premises consumption at one location.

Under the bill, a licensed *microbrewer that produces fewer than 30,000 total barrels* of beer per year may sell its beer for on-premises consumption at any of its licensed premises where beer is produced. *Microbrewers producing 30,000 total barrels or more* per year would be limited to selling its beer for on-premises consumption at no more than three locations. A brewer or microbrewer would be allowed to transport beer produced at one licensed facility to another for on-premises consumption. (MCL 436.1411)

("Engages in the production of beer" is defined in the bill to mean the full and complete brewing process, not just a portion of the brewing process).

The three bills were tie-barred with Senate Bills 504, 505, 506, 507, and 650, each of which is now enacted. Those bills addressed separate, but related, issues in the Liquor Control Code.

FISCAL INFORMATION:

As noted earlier, House Bills 4709-4711 would have an indeterminate fiscal impact on the Michigan Liquor Control Commission (LCC) and state excise tax collections depending on how the changes to production restrictions and consumption regulations affect the demand for brewer, microbrewer, and brewpub licenses and the supply of Michigan-produced beer.

As of June 12, 2013, there were two brewer licenses (both belonging to Bell's Brewery, Inc.), 92 microbrewer licenses, and 54 brewpub licenses active in the state.

Brewer and microbrewer licensure fees are \$50 per year if less than 15,000 barrels were produced during preceding year, or \$50 per 1,000 barrels produced annually if more than 15,000 barrels were produced during preceding year, up to maximum of \$1,000. The brewpub licensure fee is \$100 per year, in addition to applicable liquor license fees.

During FY 2011-12, licensure fees from Michigan brewers, micro-brewers, and brewpubs generated revenue in the tens of thousands.

Excise tax on beer manufactured and sold for consumption in Michigan is levied at a rate of \$6.30 per barrel and deposited into the General Fund. However, beer consumed on a brewer's premises is not taxed, excluding micro-brewers and brewpubs. Brewers, micro-brewers, and brewpubs that produce not more than 50,000 barrels during the tax year may claim a \$2.00 per barrel tax credit for the first 30,000 barrels produced. During FY 2011-12, the LCC collected approximately \$1.54 million in excise taxes from Michigan brewers, micro-brewers, and brewpubs.

ARGUMENTS:

For:

As stated above, proponents of the bills believe that by increasing the production level caps, Michigan's craft beer industry will continue to grow. According to testimony taken during committee, some brewers, brewpubs, and microbrewers have found themselves restricted by the current caps. By increasing the caps on production levels and the number of locations that beer can be sold by producers for on-premises consumption, supporters say additional growth in this sector will occur. The bills were supported by the Michigan Brewers Guild, the Michigan Beer and Wine Wholesalers Association, and the Michigan Beer and Wine Wholesalers Association.

Against:

Critics of the legislation, such as Bell's Brewery, have expressed several concerns; notably, that by allowing brewpubs and microbrewers to sell their products (and possibly only their products) at more outlets, the bills would restrict customer choice, given that there are a finite number of liquor licenses available. Further, some have noted that the original 30,000-barrel threshold was not arbitrary but was the product of legislative deliberation and offered businesses a choice of how to structure their businesses (whether to enjoy the advantages of remaining below the limit or grow into larger brewers). Critics have also recommended amendments that would prohibit microbreweries and brewpubs from transferring beer between locations, to avoid exploiting the new laws.

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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.