

LIQUOR LICENSES: EXPAND EXEMPTION FROM CHURCH & SCHOOL RULE

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House Bill 4169 (reported from committee w/o amendment)

Sponsor: Rep. Tommy Brann

Committee: Regulatory Reform

Complete to 5-10-17

Analysis available at
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(Enrolled Version)

BRIEF SUMMARY: House Bill 4169 would expand the exemption to the "church and school rule" provided to outstanding liquor licenses issued before March 1, 1949, to apply also to any outstanding on-premises or SDD liquor license currently located within 500 feet of a church or school, and also to the renewal or transfer of such a license, if the license were issued before March 1, 2017.

FISCAL IMPACT: The bill would not have a significant fiscal impact on the Department of Licensing and Regulatory Affairs, or other units of state or local government.

THE APPARENT PROBLEM:

The "church and school rule" contained in the Michigan Liquor Control Code generally prohibits certain types of retail liquor establishments, primarily on-premises and specially designated distributors (SDD), which sell beer, wine, and spirits, from being located within 500 feet of a church or school. SDM licensees, or specially designated merchants, who sell only take-out beer and wine, are exempt from the rule. So are outstanding liquor licenses issued before March 1, 1949.

Though the above provision sounds straightforward, many, including the Michigan Liquor Control Commission, point out that current statutory language is ambiguous and contradictory. On one hand, one provision in Section 503 of the Code requires the MLCC to deny any new license application or request to transfer the location of an existing license if the proposed location would fall within the 500-foot restriction.

Another provision in the same section allows the MLCC to grant the license/transfer request if no objections by a school or church are filed, thus implying that a church or school located within the 500-foot area may file an objection to the new license application or transfer request. If an objection is filed, Section 503 requires the MLCC to hold a hearing before making a decision on the license application or transfer request (which also implies the MLCC has authority to issue such a license despite the language requiring such requests to be denied).

Under departmental rules promulgated by the MLCC, the commission is required to waive the church and school rule if the applicant shows by competent, material, and substantial evidence that a waiver would not adversely affect the operation of the church or school. The rules provide a process by which a school or church may appeal the decision. This has led to ongoing litigation as to the authority of the MLCC to waive the

church and school rule despite the statute's requirement that licenses be denied if located too close. Depending on the eventual outcome of the litigation, some feel that licenses issued since March 1, 1949, may be in danger of being voided, thus putting many existing businesses out of business.

Complicating the matter further is a provision within Section 503 authorizing the MLCC to waive the 500-foot prohibition *in the case of other classes of licenses*. A recent change to the liquor code allows the MLCC to issue "conditional liquor licenses" under certain circumstances. A conditional license allows an applicant seeking to transfer ownership of an existing license for on-premises or off-premises consumption, or a licensee wishing to move the business to a new location, to begin operating the business while the application is being processed and investigated. The MLCC has 20 business days in which to issue the conditional license after receiving an application and up to a year to complete the investigation and either issue a permanent license or deny it. According to the MLCC, it cannot complete an investigation as to whether the proposed location is within the 500-foot restriction or consider objections from a nearby church or school within the 20-day time period for granting or denying a request for a conditional license.

Legislation addressing the apparent conflicts and ambiguous language contained in Section 503 of the liquor code has been offered.

THE CONTENT OF THE BILL:

House Bill 4169 would expand the exemption to the "church and school rule" provided to outstanding liquor licenses issued before March 1, 1949, to apply also to any outstanding on-premises or SDD liquor license currently located within 500 feet of a church or school, and also to the renewal or transfer of such a license, if the license were issued before March 1, 2017.

Church and School Rule

Under what is referred to as the "church and school rule," an application for an on-premises liquor license or Specially Designated Distributor (SDD) license may be denied by the Michigan Liquor Control Commission (MLCC) if the proposed location is within 500 feet of a church or school. An SDD, or specially designated distributor, licensee is authorized to sell spirits, in addition to beer and wine, for off-premises consumption. The church and school rule also applies to requests to transfer an existing on-premises license or SDD license. The MLCC has statutory authority to waive the church/school prohibition if the church or school does not file an objection. If the church and/or school does file an objection, the LCC must hold a hearing as provided in departmental rules before making a decision whether to grant or deny the license.

Current Exceptions

There are some current exceptions to the church and school rule. The rule does not apply:

- ❖ To Specially Designated Merchant (SDM) licensees unless the SDM was issued in conjunction with an on-premises license. SDM licensees sell beer and wine for off-premises consumption.
- ❖ To location transfers if the licensed establishment was already within 500 feet of a church or school and the transfer would still locate the establishment within the 500-foot distance but further away from the church or school. For example, a liquor establishment that is 100 feet away from a church or school could move to a location that is 400 feet away from the church or school.
- ❖ To an outstanding license issued before March 1, 1949, for a location within the 500-foot distance of a church or school, or to the renewal or transfer of that outstanding license at the location.

New Exemption

House Bill 4169 amends Section 503 of the Michigan Liquor Control Code to change the date highlighted above from March 1, 1949, to March 1, 2017. The bill also revises the commission's authority to waive the church/school rule prohibition if an objection is not filed by the church or school to apply for all classes of licenses; currently, the commission may waive the prohibition in the case of other classes of licenses.

MCL 436.1503

ARGUMENTS:

For:

The bill essentially codifies current MLCC practices regarding issuing certain liquor licenses to establishments located within 500 feet of a church or school. In so doing, the bill is believed to clarify that the MLCC has authority to waive the church and school rule absent a clear showing that the location of the proposed liquor establishment would adversely affect the operation of the church or school. Changing the March 1, 1949, date to March 1, 2017, would protect any licenses issued under Section 503 within that time period from being voided should a court considering pending litigation rule the MLCC does not have such authority. To do otherwise means putting many mom-and-pop and other businesses in jeopardy of being shut down due to loss of their liquor licenses—not because of any violations or being bad neighbors, but purely due to the date their licenses had been issued.

Allowing the commission to waive Section 503 for all classes of licenses, instead of applying in the case of other classes of licenses, will allow the MLCC to issue conditional licenses for license transfers and requests for transfers of an existing license to a new location. Should the ensuing investigation reveal that the request to move the location of an existing license would place the establishment near a church or school, the MLCC could revoke the conditional license.

Nothing in the bill would change or affect the commission's requirement to notify any church or school located within the 500-foot restriction, the ability of any church or

school to file objections, the hearing process, or the ability of a church or school to challenge in court the commission's decision to waive the church and school rule.

Against:

No arguments in opposition were offered.

POSITIONS:

A representative of the Michigan Liquor Control Commission testified in support of the bill. (4-19-17)

The Michigan Grocers Association indicated support for the bill. (4-19-17)

Spartan Stores indicated support for the bill. (4-19-17)

Michigan Retailers Association indicated support for the bill. (4-19-17)

The Associated Food and Petroleum Dealers indicated support for the bill. (4-19-17)

The Michigan Licensed Beverage Association indicated support for the bill. (4-19-17)

The Michigan Restaurant Association indicated support for the bill. (4-19-17)

The Michigan Banker's Association indicated support for the bill. (5-3-17)

The Michigan Beer and Wine Wholesalers Association indicated a neutral position on the bill. (4-19-17)

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Marcus Coffin

■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.