

SOCIAL DISTRICTS AND OUTDOOR SERVICE AREA PERMITS

Phone: (517) 373-8080
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House Bill 5090 as introduced
Sponsor: Rep. TC Clements

Analysis available at
<http://www.legislature.mi.gov>

House Bill 5093 as introduced
Sponsor: Rep. Pat Outman

Committee: Regulatory Reform
Revised 9-28-21

SUMMARY:

House Bill 5093 would add a new section to the Michigan Liquor Control Code to create an outdoor service area permit allowing an on-premises liquor licensee to have outdoor service in an outdoor service area under certain conditions.

House Bill 5090 would revise provisions of the code pertaining to social districts to eliminate the sunset (expiration date) on social district permits, change the hours during which alcohol may be consumed in the commons area of a social district, exclude an outdoor service area proposed by HB 5093 from the definition of “commons area,” allow a person to enter premises in a social district that are licensed as a Class B hotel with alcohol bought from a social district permittee, and require the portion of a commons area to be used exclusively for a special licensee’s event within that common area to be delineated from the rest of the commons area.

House Bill 5093 would create an outdoor service area permit to be issued if certain conditions were met. Currently, R 436.1419 of the Michigan Administrative Code prohibits outdoor service without approval by the Michigan Liquor Control Commission (MLCC). An approved area must be well-defined and clearly marked, and an on-premises licensee may only sell, and must allow consumption of alcohol, only within that defined area. If the outdoor service area is on city, village, or township property, MLCC requires local approval.

Under the bill, and notwithstanding R 436.1419, MLCC would be required to issue an outdoor service area permit to an on-premises licensee allowing the licensee to have outdoor service in an outdoor service area if the following conditions were met:

- An application submitted in a manner acceptable to the commission by the on-premises licensee is accompanied with a permit fee of \$250.
- As prescribed by MLCC, the on-premises licensee provides documentation that the proposed outdoor service area has been approved by the local police agency.
- The proposed outdoor service area is adjacent to the licensee’s licensed premises and extends not more than 25 feet past the licensed premises.
- The on-premises licensee owns the proposed outdoor service area or, if not, the on-premises licensee obtains written approval of the owner of the proposed outdoor service area.

Further, the holder of an outdoor service area permit would have to ensure that the outdoor service area is well-defined and clearly marked and would be prohibited from selling or allowing the consumption of alcohol outdoors except in the well-defined area.

An outdoor service permit would have to be issued for the same period, and could be renewed in the same manner, as the license held by the applicant. If the holder of the permit does not own the outdoor service area, the permit holder would be liable for damages under an action under section 801, which prohibits a retail licensee (or a clerk, agent, or servant) from selling, furnishing, or giving alcohol to a minor or to a person who is visibly intoxicated.

Proposed MCL 436.1552

House Bill 5090 would amend a section of the Michigan Liquor Control Code pertaining to social districts. Through January 1, 2025, the code allows a *qualified licensee* to obtain a permit to sell and dispense alcohol to customers for consumption in the commons area of a social district. The bill would eliminate the 2025 expiration date, thus allowing permits for social districts to be permanent.

Qualified licensee means either of the following:

- A retailer that holds a license, other than a special license, to sell alcoholic liquor for consumption on the licensed premises.
- A manufacturer that has an on-premises tasting room permit, off-premises tasting room license, or joint off-premises tasting room license issued under the code.

Special licenses

Currently, if MLCC issues a special license¹ to a special licensee located in a social district, the holder of a social district permit is prohibited from selling and serving alcohol in the commons area during the effective period of the special license.

The bill would revise this provision to instead provide that if MLCC issues a special license to a special licensee *whose event is to be held within a commons area* located within a social district, the governing body of the local unit of government would have to delineate the portion of the commons area to be used exclusively by the special licensee and the portion to be used exclusively by social district permittees. This would apply for the effective period of the special license and be subject to MLCC approval.

Removal of a container of alcohol from a social district

Currently, a purchaser may remove a container of alcohol sold by a holder of a social district permit from the licensed premises only if the purchaser does not remove the container from the commons area and if, while possessing the container, the purchaser does not enter the licensed premises of a social district permittee other than the social district permittee from which the purchaser purchased the container.

¹A special license is a limited term license, generally only for one day, that can be issued to a nonprofit organization for fundraising purposes. It can be issued for beer, wine, and spirits sales and consumption and for a wine auction with wine donated by private individuals. An organization may only be issued 12 special licenses each calendar year. This is not a quota license. No local legislative approval is required for licensure, but police or sheriff approval is required. See https://www.michigan.gov/documents/lara/licensetypes_666205_7.pdf

The bill would also allow a purchaser, while possessing the container, to enter the licensed premises of a social district permittee whose licensed premises are a Class B hotel.

Hours during which alcohol may be consumed in a commons area

Currently, alcohol in an approved container sold by a social district permittee may only be consumed in a common area during the legal hours for the sale of alcohol by the social district permittee.

The bill instead would allow consumption to occur only during the hours of operation under the local management and maintenance plans established by the governing body of the local unit of government.

Definition of “commons area”

Currently, ***commons area*** means an area within a social district clearly designated and clearly marked by the governing body of the local governmental unit that is shared by and contiguous to the premises of at least two other qualified licensees. The term does not include the licensed premises of any qualified licensee.

The bill also would provide that the term does not include the outdoor service area under an outdoor service area permit issued under provisions proposed by House Bill 5093.

MCL 436.1551

The bills are tie-barred to each other, which means that neither can take effect unless both are enacted.

FISCAL IMPACT:

House Bill 5093 would result in a considerable increase in revenue for the Michigan Liquor Control Commission within the Department of Licensing and Regulatory Affairs. The bill would necessitate the conversion of outdoor service areas (which are presently free) to outdoor service permitted areas (at a fee of \$250 per area). Once this conversion occurs, if all current outdoor service areas pursue a permit, the department estimates that annual permit fee revenues would total \$1,425,000. This additional revenue would be distributed, as required under the Michigan Liquor Control Code, as follows: 55% to local units for enforcement of the Michigan Liquor Control Code, 41.5% to the MLCC for licensing and enforcement, and 3.5% for alcoholism programs.

House Bill 5090 would not have a significant fiscal impact on the MLCC or any other unit of state or local government.

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.