

# Legislative Analysis



## SWIM-UP BARS

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**House Bill 5983 as enacted**  
**Public Act 99 of 2022**  
**Sponsor: Rep. Rodney Wakeman**

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**House Bill 5984 as enacted**  
**Public Act 100 of 2022**  
**Sponsor: Rep. John D. Cherry**

**House Committee: Regulatory Reform**  
**Senate Committee: Economic and Small Business Development**  
**Complete to 12-19-22**

**BRIEF SUMMARY:** House Bill 5984 amends the Michigan Liquor Control Code to create a new on-premises public swimming pool permit, establish an initial and renewal permit fee, and provide certain conditions, including a requirement that the exclusive area in which alcohol is sold under the permit not be accessible to minors. House Bill 5983 amends the Public Health Code to allow a public swimming pool operator to sell food and beverages (including alcoholic beverages) for consumption in the swimming pool if certain conditions are met.

**FISCAL IMPACT:** The bills would have an indeterminate fiscal impact on the Department of Environment, Great Lakes, and Energy (EGLE) and the Michigan Liquor Control Commission (MLCC). (See **Fiscal Information**, below, for a more detailed discussion.)

### **THE APPARENT PROBLEM:**

Whether for a vacation, family gathering, or conference, resort hotels offering a swim-up bar as an amenity have grown in popularity as tourist destinations. Currently, 24 states, including Ohio and Wisconsin, allow on-premises liquor licensees to operate bars in public swimming pools. It has been suggested that laws pertaining to public swimming pool safety be amended and that a new permit for on-premises licensees be created to allow businesses to operate swim-up bars in their public swimming pools in Michigan.

### **THE CONTENT OF THE BILLS:**

**House Bill 5984** adds a new section to the Michigan Liquor Control Code to authorize the MLCC to issue an on-premises public swimming pool permit to an on-premises licensee that is also licensed to operate a public swimming pool under Part 125 of the Public Health Code (as amended by HB 5983). The MLCC must develop an application for an annual on-premises public swimming pool permit that allows for licensed activities under the bill. The initial and annual fees for the new permit are established at \$350. The on-premises public swimming pool permit is not transferable by location. The permit allows the holder to sell and serve alcoholic beverages in a public swimming pool located on the licensed premises if both of the following conditions are met:

- The sales of food or beverages performed under the permit are made within an exclusive area that is well-defined, clearly marked, and not accessible to minors. (The bill states as an example, and not by way of limitation, that an exclusive area delineated

by a buoy line is well-defined and clearly marked.) An individual may possess alcohol purchased from a permit holder only in the exclusive area and the licensed premises adjacent to the exclusive area.

- The sales are conducted by employees of the permit holder who have completed a server training program as provided for in section 906 of the code and MLCC rules.

MCL 436.1548 (added)

**House Bill 5983** amends the Public Health Code to prohibit, subject to the Food Law and the provisions of HB 5984, a person engaged in the operation of a public swimming pool from allowing the preparation of food and beverages (defined to mean alcoholic and nonalcoholic beverages) in the swimming pool enclosure or allowing the consumption of food or beverages in the water of a public swimming pool unless all of the following conditions are met:

- EGLE has determined under section 12526 of the code<sup>1</sup> that the plans and specifications for the swimming pool facility meet all of the following requirements:
  - The materials used to construct the area within the swimming pool water that is used for serving, preparing, or consuming food or beverages are made of a material that is nonabsorbent, is easily cleanable, and can be regularly sanitized.
  - The area within the swimming pool water that is used for serving, preparing, or consuming food or beverages is constructed in a manner that has no sharp edges, has no open cracks, and has sealed joints.
  - Areas within the swimming pool water where there is ice, food, equipment, and any other item that is stored or used in food or beverage preparation are physically separated by a service counter or other structure or material in a manner that protects the ice, food, or equipment from splash or spillage of swimming pool water.
  - The swimming pool water is equipped with *heightened disinfection and filtration standards* and maintains increased disinfectant residuals.
  - The swimming pool water is monitored with an electronic chemical control monitoring system.
- The water temperature of the public swimming pool is maintained at no higher than 104 degrees Fahrenheit.
- The free disinfectant residual levels in the swimming pool water are tested poolside at least four times a day when the public swimming pool is open for use.
- Lifeguard service is provided in the *swimming pool enclosure* when the public swimming pool is open for use.
- A certified pool operator, or an individual holding an equivalent certification, is readily available when the public swimming pool is open for use to test the water and operate the pool's water treatment equipment.
- The public swimming pool does not contain a slide, diving board, starting block, spray feature, or similar addition in the area of the pool permitted for the sale and consumption of alcohol. However, the pool could have a waterfall, or another decorative feature, that is not intended for interaction or contact with an individual using the pool in the area permitted for the sale and consumption of alcohol.

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<sup>1</sup> Section 12526 requires EGLE to examine the plans and specifications for a swimming pool facility to determine whether they are adequate to protect the public health and safety before issuing a permit for construction of the pool.

***Heightened disinfection and filtration standards*** means all of the following:

- A regenerative media filter system or an equivalent filter system. If the swimming pool uses a sand-type filter or a cartridge-type filter, a filter system is considered equivalent if it requires a reduction in the max flow rate per square foot of filter area.
- An accelerated water turnover rate of once every four hours or less when the public swimming pool is open for use.
- An ultraviolet light secondary disinfection system or an equivalent secondary disinfection system.
- Increased inlets to prevent impaired circulation and to increase water circulation due to potential obstructions.
- Increased number of skimmers or surge weirs to ensure effective surface water skimming.

***Swimming pool enclosure*** means the area containing one public swimming pool or, if the area contains two or more public swimming pools, the area containing all of the public swimming pools, which area is surrounded by an uninterrupted constructed feature that is used to surround and secure the area; is intended to deter or effectively prevent unpermitted, uncontrolled, and unfettered access to the area; and is designed to resist climbing and to prevent passage through and under it.

In addition, a person engaged in the operation of a public swimming pool that allows food or beverages to be consumed in the swimming pool under the above provisions must ensure that the food and beverages are served in containers that are made of plastic or another nonbreakable material and are designed to reduce the chances of spilling the food or beverage in the swimming pool water.

Finally, the bill amends the definition of ***public swimming pool*** in the code to include “areas used to serve, prepare, or consume food and beverages” among the equipment, structures, areas, and enclosures intended for the use of individuals using or operating the swimming pool that are considered part of the public swimming pool for purposes of that definition.

MCL 333.12521 and 333.12526 (amended) and MCL 333.12526a (added)

### ***FISCAL INFORMATION:***

House Bill 5983 may increase costs for the Department of Environment, Great Lakes, and Energy by expanding the department’s regulatory responsibility relative to public swimming pool construction. The extent of this potential cost increase is unclear and is likely to hinge on the number of facilities that would be subject to new statutory provisions included in the bill. Revenue received from public swimming pool construction permits and operating licenses is deposited to the Public Swimming Pool Fund and used by EGLE primarily to support the department’s Environmental Health program. This program is funded by \$7.4 million Gross (\$2.5 million GF/GP) and 57.0 FTE positions in FY 2021-22. EGLE’s total FY 2021-22 appropriations are \$2.6 billion Gross (\$282.9 million GF/GP) and 1,467.0 FTE positions. The bill is unlikely to affect departmental revenues or costs or revenues for local governments.

House Bill 5984 would have an indeterminate fiscal impact on the Michigan Liquor Control Commission, housed within the Department of Licensing and Regulatory Affairs. Under the

bill, the MLCC could charge a permit fee of \$350, both initially and on an annual basis. The revenue from assessed fees would be distributed in accordance with the Michigan Liquor Control Code, which provides 41.5% for the MLCC for licensing and enforcement activities, 55% for local governments, and 3.5% for alcoholism programs. The magnitude of the revenues, cost of departmental implementation and administration, and net fiscal impact are all indeterminate, as the values would depend on the volume of licenses, which is indeterminate.

## ***ARGUMENTS:***

### ***For:***

Taken together, the bills enable establishments with an on-premises liquor license (allowing for consumption of alcoholic beverages on the licensed premises) to apply for a permit that allows the sale and consumption of beverages containing alcohol in a public swimming pool enclosure. The bills also allow the preparation, sale, and consumption of food in the pool area. However, to ensure the safety of guests and to prevent sales and service to minors, certain physical modifications must be made to existing pools and incorporated into design plans when constructing new pools. According to the Department of Environment, Great Lakes, and Energy, departmental rules will likely need updating to address such concerns.

According to committee testimony and online tourist information, swim-up bars are a highly sought amenity typically offered by resort hotels. Whether dramatically presented under a waterfall or in a cave, or simply an area at one end of a pool with a small bar, bartender, and stools, swim-up bars allow adult patrons to access alcoholic beverages without having to get out of the pool. Some even offer dine-in-pool options where food is served and consumed either poolside or at tables within the pool itself. A representative of an Ohio resort with a swim-up bar testified that the bars offer a service attractive to adults during times when families travel less, such as when school is in session. As to slip-and-fall concerns, it was pointed out that such risks are present at all swimming pools and that responsible service starts with the servers. To that point, HB 5984 requires all servers of permit holders to complete a training program before being allowed to serve customers at a swim-up bar.

It should be noted that, although “public swimming pool” as used in the Public Health Code includes pools at various venues, including parks, schools, or camps, HB 5984 restricts eligibility to sell and serve alcohol under the bills to only an entity that is licensed to operate a swimming pool under the Public Health Code and holds both an on-premises liquor license and an on-premises public swimming pool permit under the Michigan Liquor Control Code.

### ***Against:***

Some have concerns that the bills create easier access to alcohol in a setting where even mild intoxication may increase the potential for injuries such as slip and falls or drowning. Easier access to alcohol can also increase incidents of drunk driving and substance use addiction.

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