



House  
Legislative  
Analysis  
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## ADD TAVERN LICENSES FOR DOWNTOWN AREAS

House Bill 4821 as passed by the House  
Second Analysis (8-29-96)

Sponsor: Rep. David Gubow  
Committee: Regulatory Affairs

### *THE APPARENT PROBLEM:*

Reportedly, many older communities in the state are struggling to maintain their retail districts in the face of current trends for developers to build malls and other businesses in out-lying locations. However, many feel that downtown districts can appeal to consumers by offering a shopping and dining experience not available in malls via unique shops and quality restaurants and bistros. Reportedly, many communities find it hard, though, to attract restaurants if the community has no available liquor licenses. Under the Liquor Control Act, licenses for the on-premises consumption of alcoholic beverages are generally limited by population; only one such license per 1,500 people can be issued within any governmental unit. (There are, however, a number of exceptions.) Earlier this year, Public Act 2 of 1996 extended for two more years the Liquor Control Commission's (LCC) authority to grant additional resort licenses not based on the population quota to businesses meeting certain criteria. Legislation has now been proposed to authorize the LCC to issue an additional amount of tavern licenses (beer and wine only) that would be available for downtown development districts in an effort to support revitalization efforts.

### *THE CONTENT OF THE BILL:*

Under the Liquor Control Act, licenses for the on-premises consumption of alcoholic beverages are generally limited by population; only one such license per 1,500 people can be issued within any governmental unit. There are, however, a number of exceptions. House Bill 4821 would amend the Liquor Control Act to allow for another such exception. The bill would allow the Liquor Control Commission (LCC) to grant up to 50 additional tavern licenses per year under certain circumstances. (A tavern license allows an establishment to sell only beer and wine, and only for consumption on the premises.) Under the bill, the additional tavern licenses could be granted to full service restaurants that prepare food on their premises, seat no less than 25 people, and are open to the public for food service no less than ten hours a day, five days a week. In addition, a restaurant seeking such a license would have to be located in a development

district and the authority or board would have to hold a public hearing and conclude that issuing a tavern license to the business in question would promote economic growth and prevent further deterioration within the development district. Before the LCC could issue a license under the bill, the local unit of government would also have to hold a public hearing and pass a resolution which concurred with the authority or board's findings, and, the business would have to demonstrate to the commission that an escrowed license was not readily available in the county in which the development district was located. (Under the bill, "escrowed tavern license" would mean a tavern license in which the rights of the licensee to the license or to the renewal of the license were still in existence and subject to renewal and activation provisions of R 436.1107 of the Michigan Administrative Code. "Readily available" would mean available under a standard of economic feasibility as applied to the applicant's specific set of circumstances. The standard would have to include consideration of the fair market value of the license, if determinable; the size and scope of the proposed operation; and the existence of mandatory contractual restrictions or inclusions attached to the sale of the license.) Finally, a business possessing a tavern license issued under the bill would not be allowed to contain a bar, and at least 50 percent of the business' gross receipts would have to come from the sale of food that was to be eaten on the restaurant's premises. In fact, the LCC could revoke a tavern license issued under the bill (after notice and a hearing) if, during any licensing year, the sales of food for consumption on the premises fell below 50 percent of the business' gross receipts.

The LCC would not be required to issue licenses under the bill in the order in which the applications were received. However, the LCC would be barred from issuing more than one license under the bill to any individual, partnership, limited partnership, limited liability company, corporation, or any combination thereof, including stockholders, general partners, or limited partners. Furthermore, a tavern license issued under the bill could not be reclassified to any license that would allow the sale of spirits for on-premise

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consumption, or held in escrow for more than one year, nor could it be transferred as to location. Further, the LCC would be barred from issuing any other license that would allow a business to sell liquor for consumption off premises to any business that already possessed a tavern license issued under the bill.

"Development district" would mean any of the following:

--An authority district established under the Tax Increment Finance Authority Act, MCL 125.1801 et al.

--An authority district established under the Local Development Financing Act, MCL 125.2151 et al.

--A downtown district established under the downtown development authority act, MCL 125.1651 et al.

--A principal shopping district established before January 1, 1996, under the shopping areas redevelopment act, MCL 125.981 et al.

MCL 436.17k

### **FISCAL IMPLICATIONS:**

According to the House Fiscal Agency, the cost to the state would be insignificant, pertaining only to the processing of the new tavern licenses. Revenue to the state from the additional 50 tavern licenses would be \$12,500. There would be no fiscal impact on local governmental units. (4-12-96)

### **ARGUMENTS:**

#### **For:**

For many communities, and especially older ones, deterioration in downtown and other areas is a major concern. Communities have responded through many efforts, including using shopping malls or outlet malls to attract tourists and out-of-town shoppers. Still others try to attract specialty shops and unique restaurants and bistros to downtown areas in order to offer a shopping or dining experience different from what a shopping mall can offer. Reportedly, it is hard for many economically hard-hit areas to compete with nearby communities if no available liquor licenses exist. Food-service businesses often back off from areas where the licenses are unavailable, because a small, upscale restaurateur simply cannot compete with larger establishments without at least a tavern license which would allow for the sale of beer and wine. The bill would allow for 50 extra tavern licenses to be available state-wide for areas established under various development act criteria. This would give many hard-hit communities the "shot-in-arm" so essential for economic survival.

#### **Against:**

Some persons believe that increasing the availability of alcohol leads to an increase in alcohol-related problems. The bill represents a further erosion of the liquor law's restrictions on the availability of on-premises licenses and runs contrary to the public policy that lies behind a population quota system for liquor licenses. Just because recent legislation authorized more liquor licenses for certain businesses, this does not justify issuing even more licenses because other establishments want them. There are good reasons for having population quotas, and the quota system needs to be supported more fully.

#### **Response:**

It may be that the population-based restriction no longer serves any useful purpose, except perhaps to protect existing licensees. There are quite a few exceptions to the quota in statute that render it less than fully effective or consistent. It might be best to revisit the issue of retail liquor licensing in its entirety. Besides, though the bill would create 50 more licenses, there are strict criteria that an establishment would have to follow. And it should be noted that the tavern license would only permit the sale of beer and wine, not spirits. In addition, the license could not be reclassified as a Class C or hotel license, which would allow the sale of spirits, nor could it be transferred to another location. If a business closed, the license most likely would die along with the business.

#### **Against:**

Other legislation passed by the House, House Bill 5649, would allow for a county-wide transfer of liquor licenses held in escrow as opposed to the current requirement that licenses remain in the local unit that they were originally issued to. (See the House Legislative Analysis Section's analysis of House Bill 5649 dated 3-21-96.) Many argue that House Bill 5649 may solve the dilemma faced by communities with no available liquor licenses without increasing the current number of liquor licenses, and that this approach should be given a chance before any additional legislation is passed.

#### **Response:**

Even if House Bill 5649 does become law, there is no guarantee that the ability to transfer escrowed licenses county-wide would solve the problem. The types of businesses that would be attracted to many of these development areas are small, often family-owned establishments that would not have the financial resources to successfully buy an escrowed license, as the holders of the escrowed licenses sometimes have asking prices in excess of \$100,000.

#### **Against:**

Concerns have also been expressed that these tavern licenses would be going to businesses that may be able to

just marginally survive, even with the license. There is a tremendous temptation for marginal businesses to boost profits (or even to survive) by selling after hours or to underage drinkers, or to falsify records if food sales should slip under 50 percent. Based on past experiences, the LCC has expressed a concern and a conviction that the bill could inadvertently create more marginal businesses.

**Response:**

Since the local government would still retain authority to approve a business for one of these tavern licenses, and since the local government is the one trying to revitalize an area, it is unlikely that approval would be granted to an applicant that did not have a strong chance of "making it" and who would do so in compliance with existing laws.

**POSITIONS:**

The Michigan Restaurant Association supports the bill. (8-20-96)

The Michigan Municipal League supports the bill. (8-20-96)

The Michigan Retailers Association supports the bill. (8-23-96)

The Liquor Control Commission does not oppose the bill in concept, but would prefer to see if the county-wide transferral of licenses under proposed legislation would meet the needs of businesses before creating new licenses. (8-29-96)

The Michigan Interfaith Council on Alcohol Problems (MICAP) is opposed to the bill. (8-27-96)

The Michigan Licensed Beverage Association is opposed to the bill. (8-23-96)

Analyst: S. Stutzky

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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.