

Legislative Analysis



LIQUOR CONTROL CODE: OMNIBUS AMENDMENTS

Mitchell Bean, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 6224 as enacted

Public Act 213 of 2010

Sponsor: Rep. Andrew Kandrevas

House Committee: Regulatory Reform

Senate Committee: Economic Development and Regulatory Reform

Complete to 12-1-10

A SUMMARY OF HOUSE BILL 6224 AS ENACTED 11-17-10

The bill would make several changes to the Liquor Control Code of 1998, by largely (but not entirely) incorporating other legislation amending the Code previously considered during this legislative session.¹

<u>HB 6007 Provision</u>	<u>Earlier Version</u>	<u>Status</u>
Nonpublic Continuing Care Centers	HB 6007 (Rep. Crawford) SB 216 (Sen. Allen)	Vetoed - 10/12/2010 Passed by both Houses
Dualing among wine wholesalers	HB 6224 (Rep. Kandrevas) SB 1430 (Sen. Thomas)	This bill Senate Committee on Economic Development and Regulatory Reform
Sunday Morning Sales	HB 5056 (Rep. Hammel)	House Floor: Second Reading
Sunday Sales at MIS	New	
Christmas Day Sales	New	
Three-Tiered System	New	
Beer/Wine Tasting	New	
Small Distiller Tasting	HB 4996 (Rep. Scripps) SB 427 (Sen. Allen)	Passed by the House - 9/16/2010 Senate Committee on Economic Development and Regulatory Reform

NONPUBLIC CONTINUING CARE CENTERS

The bill would amend the Michigan Liquor Control Code to include a "nonpublic continuing care retirement center" in the classes of vendors that may sell alcoholic liquor at retail, and allow a licensed center to sell beer, wine, and spirits for on-premises consumption. The license fee for a nonpublic continuing care retirement center license would be \$600. The bill would require the Liquor Control Commission (LCC) to grant a

¹The bill essentially includes the provisions of HB 6007 as enrolled, but does not include items in that bill noted by the governor in her veto letter as being objectionable, and other items included in the bill to avoid conflict with HB 6426 (2010 PA 175). These dropped provisions include the addition of a catering permit (previously in SB 186) and the addition of a number of conference center liquor licenses for universities and community colleges (previously in HB 4168, HB 4759, and HB 5153). The original content of SB 216, relating to nonpublic continuing care facilities, was replaced on the Senate floor (November 10, 2010) with language concerning motorsport event licenses.

nonpublic continuing care retirement center license to an applicant that complied with the bill's requirements, subject to an overall limit of 20 such licenses issued.²

The license would allow a nonpublic continuing care retirement center to serve beer, wine, mixed spirit drink, mixed wine drink, and spirits on the licensed premises to residents and their guests only for consumption on the licensed premises.

DUALING AMONG WINE WHOLESALERS

Generally speaking, the Liquor Control Code allows wine suppliers to select more than one wholesaler to sell and distribute their products within a specific region of the state. This policy – often referred to as "dualing" – differs from the sale of beer where there is essentially one distributor within a region who is authorized by the manufacturer to sell a particular brand within that region. The bill would amend two sections of the Liquor Control Code to eliminate dualing and, instead, institute a policy of exclusive territories that would, with some exceptions, require wine suppliers to select only one wholesaler of their product in a specified region. (The term "wine supplier" in this section refers to a manufacturer, outstate seller of wine, or master distributor.)

Section 307 – Multiple Wine Wholesalers per Brand

Section 307 of the Liquor Control Code permits wine suppliers to grant to each of its wholesalers a particular sales territory allowing the wine wholesaler to act as the distributor of specific brands of the wine supplier. This section specifically permits wine suppliers to select more than one wine wholesaler per brand within a sales territory. (This section, in effect, currently allows "dualing.")

The bill provides that, beginning June 1, 2010, a wine supplier (i.e. a manufacturer, outstate seller of wine, or master distributor) would be prohibited from granting the right to sell a specified brand of wine in a sales territory to more than one wine wholesaler. Similarly, a master distributor could not itself distribute a brand in the same sales territory where the distributor granted the right to distribute a brand in that sales territory to another wine wholesaler.

The bill would grandfather existing dualing agreements of wine suppliers that were in effect on June 1, 2010, and allow such agreements to be continued or renewed. Additionally, the bill would permit wine wholesalers to sell or transfer their distribution rights for a brand to another wine wholesaler if the selling/transferring wholesaler (or a predecessor) had the right to distribute that brand and was actively selling that brand as of June 1, 2010, or if the selling/transferring wholesaler was acting as a master distributor as of June 1, 2010. (For the purposes of this section, the bill would define a "master distributor" to mean a wholesaler that acts in the same or similar capacity as a wine

² Under the bill, a nonpublic continuing care retirement center would be a residential community that provides full-time residential housing predominantly to individuals who are at least 62 years of age and is registered as a facility under the Living Care Disclosure Act, 1976 PA 440, MCL 554.801 et seq.

maker, wine manufacturer, or outstate seller of wine for a brand to other wholesalers on a regular basis in the normal course of business.³⁾

Section 205(3) – Authorized Distribution Agents as Wine Wholesalers

The bill would delete a provision in this subsection which prohibits an authorized distribution agent or ADA (a distributors of spirits) who becomes a wine wholesaler from selling or distributing a brand of wine to retailers within a region in which another wholesaler has already been assigned or authorized to sell or distribute that brand of wine by the wine supplier. This prohibition against dualing, however, does not apply to an ADA who was selling that particular brand in that region on or before September 24, 1996.⁴

WINE TASTING

The bill would amend the Liquor Control Code to allow wine makers to sell wine provided to consumers through a wine tasting on the premises where the wine maker is licensed to manufacture wine. Currently, wine makers may offer free samples to consumers from the winery premises. The bill would permit the wine maker to charge for those samples from the winery premises.

Additionally, the Code permits wine makers to sell wine for off-premise consumption at separately licensed tasting rooms. The bill would allow the wine maker to charge for wine samples provided through tasting rooms.

OFF-PREMISE BEER/WINE TASTING

The bill would allow outstate sellers of beer, outstate sellers of wine, brewers, microbrewers, specially designated distributors, specially designated merchants (or their agents) to conduct beer and wine tastings if they don't hold a license allowing on-premise consumption at the same licensed premise. To conduct a beer or wine tasting, an entity would have to obtain an "annual beer and wine tasting permit" (with no associated fee) from the LCC. The tastings would be at the site of a SDD or SDM (off-premise licensees, such as supermarkets and package stores), and subject to the following requirements.⁵

³Notwithstanding the definition included in this section, the bill also defines "master distributor" in Section 109 to mean, "a wholesaler who acts in the same or similar capacity as a brewer, wine maker, outstate seller of wine, or outstate seller of beer for a brand or brands of beer or wine to other wholesalers on a regular basis in the normal course of business." Chapters 3 (Wine) and 4 (Beer) also contain a definition of "master distributor" that essentially has the same meaning as the definition in Section 109, but is specific to the product regulated under that chapter.

⁴This provision was added to the Liquor Control Code with the enactment of 1996 PA 40 (SB 1171), which largely privatized the liquor distribution system in the state, by authorizing a few ADAs (rather than the state) to warehouse and distribute liquor (spirits) to retailers. The state continues to act as the wholesaler of spirits. Because of the changes made to Sec. 307, this provision is no longer necessary.

⁵Public Act 175 of 2010 (HB 6426) recently amended the Liquor Control Code to allow consumer sampling (tasting) events at the premises of SDDs conducted by vendors of spirits or manufacturers of alcoholic liquor (brewers, distillers, wine makers, etc).

1. The LCC would have to be notified in writing at least 10 days before the event.
2. Samples are free to consumers.
3. Consumers are limited to three 3-ounce servings of beer or three 2-ounce servings of wine, and are limited to three samples within a 24-hour period per licensed premises.
4. Wholesalers could not conduct a tasting event or otherwise "participate in" one.
5. Products used for the tasting event would be purchased from the inventory of the SDD/SDM hosting the event.
6. Unfinished product used for samples must be removed from the premises or otherwise secured.
7. The entity conducting the event (or its agent or employee who has completed the server training requirements) would devote its full energies to the tasting event, and could not perform other functions, including selling alcoholic liquor for off-premise consumption.
8. Consumption could take place only during legal hours.

BRANDY MANUFACTURER/SMALL DISTILLER TASTING

The bill would allow a brandy manufacturer or small distiller to conduct tastings and sell their product for off-premise consumption at tasting rooms located off the licensed premise where their product is manufactured. There would be a \$100 license fee. The tasting rooms would be considered "licensed premises" for licensing and inspection purposes, and tastings and sales would be limited to legal hours.

Generally, under the Liquor Control Code, brandy manufacturers and small distillers may sell their product directly to consumers at the manufacturing premises for off-premise consumption or at a restaurant located on the manufacturing premises. The Code also allows brandy manufacturers and small distillers to provide consumers with free samples at the manufacturing premises.

SUNDAY SALES OF BEER AND WINE

Under Section 1111 of the Liquor Control Code (MCL 436.2111), the sale of beer and wine after 2 a.m. on Sundays may be prohibited in any local unit of government (city, village, township, or county) upon a referendum of voters.⁶ If not prohibited, retailers may begin selling beer and wine after 12 noon on Sundays.

The bill moves up the start of the legal hours of the sale of beer and wine on Sunday (unless prohibited by the local government) from 12 noon to 7 a.m., so that legal hours would be from 12 midnight to 2 a.m. and then 7 a.m. to 2 a.m. Monday.⁷ The bill would permit local governments to prohibit sales between 7 a.m. Sunday and 2 a.m. Monday by

⁶An election deciding that question cannot occur more often than every four years.

⁷The bill doesn't specify the time zone, meaning that it is the local time for both communities in the Eastern time zone and communities in the Central time zone. Gogebic, Dickinson, Iron, Menominee counties are in the central time zone. Under Section 1114, as amended by the bill, the legal hours are from 7:00 a.m. to 2:00 a.m., except as prohibited by local governments.

a vote of its legislative body. If that body fails to act on this issue, it could be placed before the voters directly.

Under the bill, then, a local unit of government could not choose to maintain the status quo - i.e. allow sales to begin at 12 noon. It would have to prohibit all Sunday sales (except 12 midnight to 2 a.m.).

SUNDAY SALES OF SPIRITS

Under Section 1113 of the Liquor Control Code (MCL 436.2113), the sale of spirits and mixed spirit drinks after 2 a.m. is prohibited. The code then allows the county board of commissioners or county voters to authorize the sale of spirits and mixed spirit drinks beginning at 12 noon. The bill, instead, provides that the sale of spirits is allowed between 7 a.m. Sunday and 2 a.m. Monday unless prohibited by the county board of commissioners or county voters. Specifically, the bill provides the following:

1. Unless prohibited, spirits and mixed spirit drinks may be sold in a licensed establishment that derives more than half of its gross receipts from the sale of food and other goods beginning at 7 a.m.
2. Unless prohibited, spirits and mixed spirit drinks may be sold in licensed retail establishments beginning at 7 a.m.

Under the bill, counties could not choose to maintain the status quo - i.e. allow sales to begin at 12 noon. Counties would have to prohibit all Sunday sales (except 12 midnight to 2 a.m.). Also, counties previously had to specifically authorize the sale of spirits. Under the bill, spirit sales are authorized unless prohibited by the county.

SUNDAY SALES AT MIS

The bill provides that Sunday sales from 7:00 a.m. to 2:00 a.m. at a "motorsports entertainment complex" located in more than one county shall not be prohibited if one county prohibits sales and the other one allows sales. A "motorsports entertainment complex" is one (including the grounds) that has at least 70,000 fixed seats for race events, has at least 4 scheduled days of motorsports events, serves food and beverages at the complex during motorsports events staffed by nonprofit organizations, engages in tourism promotion, and has permanent exhibitions on display at the complex.

CHRISTMAS SALES

The Code also restricts sales of liquor during the Christmas holiday, by prohibiting sales from 9:00 p.m. December 24th through 7:00 a.m. December 26th (or legal hours on December 26th if it is a Sunday).

The bill, instead, allows sales through 11:59 p.m. December 24th, beginning at 12 noon on Christmas Day, and normal legal hours on December 26th.

THREE-TIERED SYSTEM

The bill specifies that, except for licensed warehousemen, all liquor licenses in the state are to be separated into three distinct tiers:

1. Supplier Tier: Comprising manufacturers and suppliers.
2. Wholesaler Tier: Comprising wholesalers.
3. Retailer Tier: Comprising retailers.

The bill further provides that beginning November 1, 2010, the LCC would not allow any of the following:

1. A retailer to hold (directly or indirectly) a license in the wholesaler or supplier tier.
2. A wholesaler to hold (directly or indirectly) a license in the retailer or supplier tier.
3. A supplier to hold (directly or indirectly) a license in the wholesaler or retailer tier.

The above provision would not prohibit a Class C, tavern, Class A hotel, or Class B hotel license from receiving a brewpub license and would not prohibit a microbrewer or brewer producing less than 200,000 barrels per year from having an on-site restaurant.

FISCAL IMPACT:

Nonpublic Continuing Care Facilities – According to the 2009 annual report of the Office of Financial and Insurance Regulation, as of the end of 2009, there were 25 facilities licensed under the Living Care Disclosure Act. However, the bill caps the number of liquor licenses for these facilities at 20. Allowing such facilities to obtain a liquor license (\$600) would generate, at most, \$12,000 in liquor license revenue annually. Under the Liquor Control Code, 41.5% of liquor license revenue is credited to the Liquor Control Commission (\$4,980), 55% is credited to the appropriate local unit of government (\$6,600), and 3.5% is used for alcohol abuse prevention and treatment programs (\$420). Otherwise, the bill would have no material staffing/cost impact on the Liquor Control Commission.

Dualing – The dualing provisions in the bill would have no direct fiscal impact on the state or local units of government.

Wine Tasting by Wine Makers – The bill would have no impact on the licensing and enforcement functions of the Liquor Control Commission. The bill could result in some additional wine tax revenue (credited to the General Fund), to the extent the additional venues available to wine makers results in an increase in sales.

Beer/Wine Tasting at SDM/SDD Facilities – The bill would have an indeterminate fiscal impact on the Liquor Control Commission, as the bill does not include a fee to offset the LCC's enforcement responsibilities. Given that the LCC is partially funded through the Liquor Purchase Revolving Fund, the excess of which lapses to the General Fund, any increased licensing and enforcement activities by the agency would serve to increase their LPRF expenditures, thereby reducing the GF lapse. Additionally, the bill could result in a small increase in beer and wine tax revenue resulting from increased sales prompted by these tasting events. Under previous legislation, industry experts estimated that allowing consumer sampling/tasting events for spirits would increase gross spirit sales by 0.42% (compared to CY 2009 sales figures). Assuming this same percentage increase, the bill could result in an increase in beer and wine tax revenue - both credited to the General Fund - of approximately \$215,600.

Brandy Manufacturer/Small Distiller Tasting Room – The bill would generate a minimal amount of license fee revenue. Currently, there are fewer than two dozen brandy manufacturer and small distiller licenses, with certain small distillers possessing multiple licenses. If each license were associated with one tasting room permit, the bill would generate an additional \$2,400 in revenue split among the LCC (41.5%), the appropriate local unit of government (55%), and alcohol abuse prevention programs (3.5%).

Sunday Sales Permit – The bill would have an indeterminate fiscal impact on the state and local units of government, depending on the extent to which local governments choose to prohibit Sunday sales, and the extent to which liquor licensees choose to obtain a Sunday morning sales permit. Previously, with regard to HB 5056, the Liquor Control Commission had estimated that about 20% of liquor license holders would choose to obtain a Sunday morning sales permit (at a cost of \$1,500 under HB 5056). Assuming the same percentage as previously estimated, the bill could result in an additional \$512,000 in liquor license revenue annually. Given that the Sunday sales permit fee is substantially lower than previously proposed, the percentage of retail liquor license holders choosing to obtain a Sunday sales permit could increase, thereby increasing license revenue, particularly given that liquor license fees are not prorated based on how much time in the licensing year has elapsed. (Sunday morning permit holders would have to renew their permit again in April 2011, when all liquor licenses and permits expire.) Also, because the bill expands the legal hours of sale, it could result in liquor sales and liquor tax revenue, which is credited to the Liquor Purchase Revolving Fund, the School Aid Fund, the Convention Facilities Development Fund, and the General Fund.

Sunday Sales at MIS – The bill would have no material fiscal impact on the state or local units of government.

Christmas Sales – The bill could result in an increase in liquor sales and liquor tax revenue.

Three-Tiered System – The added provisions reinforcing the three-tiered system of distribution of liquor would have an indeterminate impact. Reportedly, there are a few dozen wholesalers and a few manufacturers that also hold retailer licenses that would be required to divest themselves of their interest in its retail operations.

Fiscal Analyst: Mark Wolf

■ 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.