

ALLOW CONSUMPTION OF BYOB ALCOHOL AT NON-LICENSED PREMISES

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House Bill 5508

Sponsor: Rep. Bert Johnson

Committee: Regulatory Reform

Complete to 10-13-09

A SUMMARY OF HOUSE BILL 5508 AS INTRODUCED 10-13-09

The bill would amend the Liquor Control Code to create a new "cabaret license" allowing for the consumption – but not the sale – of alcohol at non-licensed premises in a city with a population of at least 500,000 (Detroit).

Currently, under Section 913 of the Liquor Control Code, MCL 436.1913, it is unlawful to maintain, operate, or lease, or otherwise furnish to any person, any premises or place that is not licensed under the act within which the person could drink alcoholic liquor "for consideration."¹

The bill would permit, for consideration, the consumption of alcohol, on a bring-your-own basis (BYOB), at non-licensed premises upon the issuance of a cabaret license to an applicant, subject to any restrictions set forth by local ordinance, and the explicit approval of the license to individual applicants by the local legislative body. The license would only be permitted in the City of Detroit. A cabaret license would not be issued to a person who currently holds any other liquor license. The annual license fee would be \$600.

Before the license could be issued, the city would have to enact an ordinance allowing non-licensed premises to allow for consumption of alcohol on a BYOB basis, but not allowing the cabaret license holder or owner of the establishment to sell or otherwise furnish alcohol. The local unit would also have to adopt a resolution approving the initial issuance of the cabaret license to specific individual applicant.² The local unit could object to the renewal of

¹ See, the March 25, 2009 memorandum from the LCC regarding the consumption of alcohol at unlicensed premises, [http://www.michigan.gov/documents/dleg/Unlicensed_Premises_-_Consumption_272127_7.pdf]. Section 913 defines "consideration" to mean, "any fee, cover charge, ticket purchase, the storage of alcoholic liquor, the sale of fee, ice, mixers, or other liquors used with alcoholic liquor drinks, or the purchase of any service or item, or combination of service and item; or includes the furnishing of glassware or other containers for use in the consumption of alcoholic liquor in conjunction with the sale of food." Along a similar line, Section 1021 of the Liquor Control Code permits restaurant patrons who purchase a meal and a bottle of wine to take a partially consumed bottle of wine home, provided the restaurant re-inserts the cork "so that the top of the cork is level with the lip of the bottle." The section further notes that the transportation or possession of a partially-consumed bottle of wine must be in compliance with the open (alcoholic) beverage container provisions in the Michigan Vehicle Code, MCL 257.624a.

² A similar process is in place for other on-premise licensees. Section 501 of the Liquor Control Code, MCL 436.1501, states, in part, "[a]n application for a license to sell alcoholic liquor for consumption on the premises, except in a city having a population of 750,000 or more, shall be approved by the local legislative body in which the applicant's place of business is located before the license is granted by the commission..." See, generally, *A Guide to the Rights and Responsibilities of Local Governments under the Liquor Control Code*, Michigan Department of Labor, and Economic Growth, January 2004, [http://www.michigan.gov/documents/cis/locgovguide_184872_7.pdf].

a cabaret license—preventing reissuance of the license—if it files its objection with the LCC at least 30 days before the license expires. If the objection is not filed with the LCC within the time prescribed, the license could be renewed without the explicit approval from the local unit.³ The LCC would have to provide the local legislative body and the local police department with the pertinent contract information for the applicant to enable the local unit to conduct its review of the application.⁴ The local unit could also request that the LCC revoke the cabaret license of a licensee, after providing the licensee with notice of the request to revoke the license, if the local unit presents evidence that the licensee has violated the act.⁵

FISCAL IMPACT:

The bill would increase liquor license revenue by an unknown amount, depending on the number of new "cabaret licenses" issued. (The license would be limited to the City of Detroit). The bill would impose a \$600 fee for each cabaret license issued.

It appears that the fee established under the bill is a non-retail license fee and, as such, would be credited to the Grape and Wine Industry Council. Under Section 543(2) of the Liquor Control Code, "[a]ll license and license renewal fees, *other than retail license and license renewal fees*, shall be credited to the Grape and Wine Industry Council created in Section 303, to be used as provided in Section 303. Money credited to the Grape and Wine Industry Council shall not revert to the state general fund at the close of the fiscal year, but shall remain in the account to which it was credited to be used as provided in Section 303." Section 303 charges the council with the task of providing for research on wine grapes and wines, providing the wine industry with information on the proper handling and selling of wine grapes and wines, providing market analysis, promoting the sale of Michigan wine grapes and wines, and provide financial aid to wine grape growers to foster the increased planting of wine grapes.⁶ The FY 2009-10 Department of Agriculture budget – Enrolled Senate Bill 237 – includes \$682,800 in non-retail liquor licensee fee revenue supporting grape and wine-related programs.

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.

³ Under Section 501 of the Liquor Control Code, licenses expire on April 30th of each year, and are subject to renewal. On the ability of local units to object to the renewal of a license (in general), the section notes, "if an objection to a renewal has not been filed with the commission by the local legislative body not less than 30 days before the date of expiration of the license, the approval of the local legislative body shall not be required."

⁴ A similar provision also is in place for on-premise licensees under Section 501 of the Liquor Control Code.

⁵ Again, similar provisions are in place for on-premise licensees under Section 501.

⁶ Section 543 directs that "of the proceeds of the retailers' license fees and license renewal fees", 55% is used for liquor law enforcement grants to the local unit of government, 41.5% is retained by the Liquor Control Commission for licensing and enforcement, and 3.5% is used for alcohol abuse and prevention programs. Section 111 of the Liquor Control Code defines "retailer" to mean "a person licensed by the commission who sells to the consumer in accordance with rules promulgated by the commission." The section doesn't specify what the retailer sells to the consumer, but presumably it means alcohol. Since, under the cabaret license, there would be no sale of alcohol by the licensee, the license would be a non-retail license, because the LCC does not have jurisdiction over non-licensed premises. Moreover, the bill specifically states, "[t]he cabaret license does not allow the sale of alcoholic liquor at retail to any person for consumption on or off the licensed premises."