



**House
Legislative
Analysis
Section**

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House Bill 4662 as passed by the House
Sponsor: Rep. Pat Gagliardi

House Bill 4665 as passed by the House
Sponsor: Rep. Jerry C. Bartnik

Senate Bill 146 as passed by the House
Sponsor: Sen. Edgar Fredricks

Senate Bill 147 as passed by the House
Sponsor: Sen. William E. Sederburg

Senate Bill 148 as passed by the House
Sponsor: Sen. Mitch Irwin

First Analysis (6-18-87)

H.B. 4662 et al (6-18-87)

THE APPARENT PROBLEM:

"Bed and breakfasts" (B&Bs) have been a popular, traditional form of accommodation for travelers for many years in Europe and New England. Typically, a bed and breakfast establishment is a private home where the owners rent a room and provide breakfast to a traveler for a single price. Until just recently the establishments were practically nonexistent in Michigan. However, as national interest in B&Bs has soared, so has their establishment in Michigan. For instance, a Michigan State University study completed in December 1986 showed that there were 65 B&Bs in Michigan in 1984 and 110 in 1985.

Traditionally, bed and breakfast establishments offer lodging and food to the public, which has caused some officials to attempt to apply state standards regulating hotels and food service businesses to B&Bs. B&B owners claim that this action could blur the distinction between traditional B&Bs and hotels or motels that serve a free breakfast. In addition, it could also stifle the growth of the B&B industry in Michigan by placing strict, and often expensive, requirements on individual homes. Thus, some believe that the state could encourage the growth of the industry by defining B&Bs and outlining what state regulations they must follow.

THE CONTENT OF THE BILL:

House Bill 4662 would amend the Public Health Code to exempt bed and breakfasts from food service establishment provisions. House Bill 4665 and Senate Bills 145, 146, and 147 would amend various other acts to exempt bed and breakfasts from hotel regulations, grant them a lien to enforce payment, limit their liability for guests' property, and remove them from commercial hotel construction codes.

House Bill 4662

Under the bill, a "bed and breakfast" establishment would be defined as a private residence that was also an innkeeper's residence. It would have sleeping accommodations for rent to lodgers (called transient tenants) in no more than 14 rooms. Each sleeping room would be equipped with a fire extinguisher in proper working order and each floor would also need a properly working fire extinguisher. In addition the establishment would serve breakfasts at no extra cost to tenants. "Transient tenants" would be defined as people who rented a room in a bed and breakfast for fewer than 30 consecutive days.

A bed and breakfast would be exempt from regulation under the Public Health Code as a "food service establishment" either if it had eight or fewer rooms for rent, or if it had at least nine but fewer than 15 rooms for rent and only served continental breakfasts. "Continental breakfast" would be defined as "the serving of only nonpotentially hazardous food such as a roll, pastry, or doughnut, fruit juice, hot beverage, or individual portions of milk and items incidental to such foods".

MCL 333.12901

House Bill 4665

The bill would amend the State Construction Code Act to provide that a bed and breakfast would be considered a single family residential structure and could not be treated as a hotel or other facility serving transient tenants. This provision would be in effect throughout the state without local modification, notwithstanding the exemption provisions in the construction code that allow local governments to exempt themselves from parts of the code. Further, the bill would define the term "bed and breakfast" to apply to B&Bs constructed before the effective date of the bill, and to a single family residential structure that was constructed before the effective date of the section and was renovated to become a bed and breakfast after the effective date of the bill. The term would not apply to B&B's constructed after the effective date of the bill, or to single family residential structures that were constructed and renovated to become bed and breakfasts after the effective date of the bill. Under the bill the term B&B could not be interpreted to affect local zoning, fire safety, or housing regulations.

MCL 125.1504b

Senate Bill 146

The bill would exempt bed and breakfasts from hotel regulations.

MCL 427.1

Senate Bill 147

Public Act 145 of 1897 provides for a hotel keeper's lien. The bill would amend the act to authorize bed and breakfasts to enforce payment by detaining a lodger's baggage in the same way other lodging establishments may do so under the act.

MCL 427.201

Public Act 42 of 1905 limits an innkeeper's liability for guests' personal property. The bill would extend the act to cover bed and breakfasts.

HOUSE COMMITTEE ACTION:

The House Tourism and Recreation committee amended the package of bills to delete all tie-bars because of the substitution of House Bills for Senate Bills and the addition of amendments.

BACKGROUND INFORMATION:

A similar package of bills providing more regulations for bed and breakfasts was introduced last session.

FISCAL IMPLICATIONS:

According to the Department of Commerce, the bills would have no fiscal implications for the state. (6-18-87)

ARGUMENTS:

For:

Encouraging the development and growth of B&Bs in Michigan can do nothing but enhance an already flourishing tourism industry. Expansion of B&B businesses could have several positive outcomes: creation of new small business opportunities for Michigan residents; proliferation of less expensive alternatives to traditional hotel-motel operations, thus offering diversity in the lodging industry; restoration or preservation of homes with historical significance by making it economically viable for owners to live in and maintain them; utilization, rather than deterioration, of older homes in urban areas; and development of available lodging in areas of the state that are unable to support more extensive forms of lodging.

Currently, members of the fledgling B&B industry face compliance with the body of state regulations regarding lodging and food service that were designed for hotels, motels, and the restaurant business. If strictly applied to B&Bs, these restrictions could require individuals to incur substantial expenses, thereby either forcing them out of business or making them drastically alter the type of experience they could provide. The bills would ease the burden of regulation faced by B&B owners, thus reflecting the uniqueness of B&Bs in the lodging industry, and making their operation more feasible, attractive, and affordable.

For:

Michigan's bed and breakfast industry has experienced dramatic growth during the 1980s. Yet, confusion concerning the regulation of B&Bs has caused difficulty for some B&Bs attempting to get established. The bills would facilitate further growth by clarifying the definition of B&Bs. In addition, the bills would reduce the application to B&Bs of what many in the industry claim are unnecessary regulations.

For:

Thirty percent of the B&Bs surveyed in an MSU study were located in communities that had enacted special ordinances pertaining to B&Bs, which often require special permits and licenses. These ordinances frequently include certain restrictions and requirements such as zoning, minimum square footage of guest rooms, adequate off-road parking, smoke detectors, limits on outside signs, and maintenance of guest records. The bills would not negate these types of local ordinances.

Response: It is not absolutely clear whether the bill's would preempt local ordinances or simply set a minimum standard.

Against:

While encouraging the B&B industry is an excellent idea, House Bill 4662, in its attempt to do so, raises some serious questions. Of particular concern is the provision that would exempt a B&B from food service regulations if it had eight or fewer rooms for rent. This would mean that a B&B could serve a full breakfast to 16 guests, or possibly more if the permanent residents were included, without having to abide by the sanitation and safety requirements that other food service establishments face. A full breakfast would be more than juice, coffee, and a roll, and could include meat and egg products that are susceptible to contamination if not properly prepared.

According to an MSU survey, while most B&Bs in the state provide a continental breakfast to their guests, 19 percent serve a full breakfast. Under present health code regulations, only B&Bs with licensed food service facilities can serve meals other than a continental breakfast: juice, coffee and a commercially-produced baked good. Almost half (46 percent) of the B&Bs that serve only a continental breakfast indicated in the survey that they would serve a full breakfast if House Bill 4662 were passed. However, most B&Bs are private homes that do not contain the kitchen, food storage, and sanitary facilities necessary to serve full breakfasts daily to 16 or more people.

In addition, there are many motels of similar size located throughout the state, but especially in the Upper Peninsula, that would qualify under the bill to serve breakfasts without being licensed. Exempting B&Bs from food service regulations could give them an unfair advantage over nearby restaurants or cafes that are subject to regulation: one facility that serves food should not be regulated while another is free from regulation.

Against:

Most B&Bs across the country reportedly are subject to some degree of regulation. In fact, B&Bs located in the Northeast are regulated, with some exemptions for those that serve a continental breakfast. Certain states in the Midwest allow exemptions based on the number of rooms, but their exemptions do not apply to B&Bs that have more than four guest rooms. The states of Ohio and Washington exempt B&Bs that have five or fewer rooms. It is not clear why Michigan should exempt B&Bs with eight or fewer rooms, especially since this is not permitted by other states that have had more experience in dealing with B&Bs. Since disallowing any exemptions may be desirable but not feasible, exemptions should apply to B&Bs with four bedrooms or less. The average domestic kitchen could handle complete food service for eight guests, at full occupancy, with no problem. Further, the serving of breakfast should be restricted only to morning hours. This restriction would eliminate the possibility that food, especially a "full breakfast", was served any time of the day. If breakfast was not served after morning hours the risk of placing an undue burden on limited kitchen facilities and increasing the possibility of food contamination due to improper handling and inadequate storage of food would be avoided.

Against:

Proponents of House Bill 4662 argue that incidents of food contamination occur more often at restaurants than in private homes and that, therefore, B&Bs as private residences would be safer than restaurants in serving food to their guests and should not have to be licensed. Food poisoning statistics suggest otherwise, however. State public health officials noted that the Center for Disease Control (CDC), in Atlanta, Georgia, last year investigated between 15,000 and 30,000 reported cases of food

contamination that occurred in private and public settings throughout the country. The CDC also estimated that last year there were between 24 million and 81 million unreported cases of food poisoning, which happened in homes and public facilities, and involved campylobacter, salmonella, shigella, staphylococcus, and other forms of food contamination. In 1986, there were more than 100 food-related outbreaks, that affected more than 1,000 people, reported in Michigan at licensed and unlicensed dining facilities. In 1985, Public Health Department officials noted that there were six "major" outbreaks in the state that affected more than 650 people and resulted in two "possibly related" deaths. Health officials also pointed out that many food contamination cases that occur in the home go unreported. Therefore, contentions by the bill's advocates that more food contamination occurs at public dining facilities than at home, and that B&Bs as primarily private residences should not be licensed because they would be safer than restaurants, are unfounded. Besides, the scope of inspections by public health officials goes beyond food handling to include such factors as water supply and sewage disposal. The purpose of requiring B&Bs to be inspected would be to minimize the risk of food poisoning and protect the B&B owners, guests, and neighbors who could be affected by poor sanitation and water supplies, rather than just to regulate for the sake of regulation.

Response: ince most B&Bs are owner-occupied homes, the owner-operators are highly motivated to maintain proper sanitation standards because they can ill-afford to earn a bad reputation, or to defend themselves from lawsuits.

Against:

The bills would establish B&Bs as a special class in the lodging industry. Some aspects of laws and regulations that affect hotels and motels, under the bills, would apply to B&Bs and would benefit the B&B industry. Yet, B&Bs would be exempt from other state laws with which hotels and motels must comply in order to operate in the state. For example, Senate Bill 147 would authorize B&Bs to enforce payment by detaining a lodger's baggage, as other lodging establishments now can do under Public Act 145 of 1897. Senate Bill 148 would extend to B&Bs the limitation on an innkeeper's liability for guests' personal property. Yet House Bill 4665 would treat B&Bs as a permanent residence and not a hotel or other facility under the State Construction Code Act, removing them from certain commercial hotel construction requirements. Hotels and motels in the state are subject to a number of health, fire, and safety laws, and may be required to obtain liability insurance, in order to protect the facilities and the traveling public. While B&B proponents contend they are private homes, B&Bs are open to members of the public who deserve the same level of protection they already have at hotels and motels operating in the state.

POSITIONS:

The Michigan Travel Bureau supports the package of bills. (6-18-87)

The Michigan Restaurant Association supports the package of bills. (6-18-87)

The Michigan Bed and Breakfast Association supports the package of bills. (6-18-87)

The Michigan Lodging Association supports the concept of the package of bills. (6-18-87)

The Michigan Municipal League supports House Bill 4665. (6-18-87)

The Department of Public Health opposes the bills. (6-18-87)