

Legislative Analysis



KENT COUNTY LIQUOR LICENSES

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House Bill 4232 as enrolled

Public Act 191 of 2004

House Committee: Regulatory Reform

Senate Committee: Economic Development, Small Business & Regulatory Reform

House Bill 4930 as enrolled

Public Act 192 of 2004

House Committee: Regulatory Reform

Senate Committee: Economic Development, Small Business & Regulatory Reform

Sponsor: Rep. James Koetje

Second Analysis (8-31-04)

BRIEF SUMMARY: House Bill 4232 would allow countywide availability of escrowed liquor licenses for Kent County (with the exception of the City of Grand Rapids). House Bill 4930 would allow the Michigan Liquor Control Commission to issue a tavern license, without regard to the population quota, to a municipal golf course in the City of Grand Rapids.

FISCAL IMPACT: House Bill 4232 would have no fiscal impact on state or local governments. House Bill 4930 could have a very small fiscal impact on the state due to potential licensing revenue, perhaps in the range of \$600. The additional mark-up revenue to the Liquor Control Commission from increased consumption is as well negligible. There could be additional revenue to the City of Grand Rapids but the amount is indeterminate.

THE APPARENT PROBLEM:

Historically, an on-premises liquor license could not be transferred from the local governmental unit where it was originally granted to an establishment in another locale. Legislation in the mid-1990s amended the liquor code to allow on-premises licenses that are held in escrow to be transferred to any governmental unit within the same county, with the exception of a county with a population between 500,000 and 700,000. At the time of the legislation, Kent County officials did not want to be included in the county-wide transferability of escrowed liquor licenses, and the population qualifier was added so to exclude the county. Reportedly, many in Kent County are now interested in being able to transfer escrowed on-premises liquor licenses across local jurisdictional lines. However, the City of Grand Rapids would still prefer to have an exemption. Legislation has been offered to allow businesses and local officials in Kent County to transfer escrowed licenses to other local units (as occurs in other counties), while retaining the exemption for the City of Grand Rapids.

In a different matter, the City of Grand Rapids is seeking the ability to obtain a tavern license for the on-premises sale of beer and wine at a city owned and operated golf course. Some time ago, land was donated to the city for use as a cemetery but the deed allowed any portion of the land not yet needed for cemetery use to be used for a parks and recreation purpose. Currently, some of the land is being used as a cemetery and the rest is being used for a public golf course. This portion of the property is not expected to be needed for cemetery use for another 30 to 40 years. In the meantime, revenue from the golf course subsidizes the Grand Rapids parks and recreation fund and the city cemetery fund.

Lately, in light of shrinking revenue sharing funds, the state has encouraged local municipalities to try to find other revenue streams to fund city programs wherever possible. In this spirit, the City of Grand Rapids would like to obtain a liquor license for the sale of beer and wine at the golf course. The increase in revenue that beer and wine sales would generate could then be used to further subsidize the city's parks and recreation and cemetery programs, thus lessening the strain on general fund monies. In addition, some feel that legitimate alcohol sales could reduce problems associated with underage drinking and over indulgence by golf patrons who bring their own alcoholic beverages to consume while golfing.

However, the issuance of on-premises liquor licenses, with some exceptions, is controlled by a quota system based on population. The liquor code does allow a municipally-owned golf course open to the public to have a Class C on-premises license, which allows the sale of spirits as well as beer and wine, but that provision only applies to a municipality within a county with a population of at least one million (Kent County has a population of 574,335). Therefore, legislation is needed to create an exception from the quota system for the Indian Trails golf course in Grand Rapids before a tavern license can be issued.

THE CONTENT OF THE BILLS:

The bills would amend the liquor code 1) to allow escrowed liquor licenses to be transferred to any governmental unit within Kent County, with the exception of the City of Grand Rapids, and 2) to allow a tavern license to be issued to a public golf course owned and operated by the City of Grand Rapids. The bills are tie-barred to each other.

House Bill 4232 would amend the Michigan Liquor Control Code (MCL 436.1531) to remove, from the time the bill took effect until July 1, 2009, the population restriction on the countywide transferability of escrowed liquor licenses for Kent County. Currently, a county with a population less than 500,000 or more than 700,000 may transfer an available on-premise escrowed liquor license from one governmental unit to another within that county. Thus, under the bill, escrowed liquor licenses could be transferred to any governmental unit within a county in all of the state's 83 counties. (Kent County, with a population of 574,335, is the only county that cannot transfer an escrowed liquor license countywide; an escrowed license can only be transferred to a location within the governmental unit to which it was originally issued.)

However, the bill would specify that if the on-premises escrowed license had been issued to a location within a city with a population of over 190,000 but under 300,000 (only Grand Rapids fits this population category), the on-premises escrowed license could not be transferred to an applicant whose proposed operation was located within any other local governmental unit in the county in which that city was located. In addition, an escrowed license located within any local governmental unit in that county would not be transferable into the excluded city.

Further, an applicant for an on-premise resort or resort economic development license must submit verification that he or she had first tried to secure an escrowed license or quota license and the Liquor Control Commission is precluded from issuing resort licenses if the local governmental unit or county within the resort or resort economic development area has not issued all available on-premises licenses or escrowed licenses. The bill would make similar changes to these provisions so that, until July 1, 2009, they would apply to all jurisdictions in the state except for a city with a population of over 190,000 but less than 300,000.

House Bill 4930 would amend Section 515 of the Michigan Liquor Code (MCL 436.1515). Under provisions of the Michigan Liquor Control Code, the Liquor Control Commission is authorized to issue, without regard to the population quota, a class C liquor license for a golf course that is owned by a county, city, village, or township, open to the public, and located in a county with a population of 1 million or more.

The bill would amend the code to also allow the commission to issue a tavern liquor license (for on-premises beer and wine sales only), also without regard to the population quota, for a golf course owned by a city with a population greater than 190,000 but under 300,000, that is open to the public, and located in a county with a population between 500,000 and 700,000.

BACKGROUND INFORMATION:

On-premises liquor licenses, which allow restaurants, bars, and hotels to serve alcohol to their patrons on the licensed premises, are issued based on population. For each 1,500 of population (or major fraction thereof), one license is available in the local governmental unit. Licensees must be approved by both the Liquor Control Commission and the local city council or township board.

When a restaurant, bar, or hotel with an on-premises liquor license goes out of business, the license can be held in escrow by the Liquor Control Commission until the license's expiration date. (The licensee can apply for an extension for a year beyond the license's expiration date. Any further extensions are subject to commission approval.) Escrowed on-premises liquor licenses are allowed to be transferred from one local unit to another within the same county, but the license will be counted against the local governmental unit that originally issued the license. If the local governmental unit spanned more than one county, an escrowed license could be transferred to any governmental unit within either county.

In addition to the on-premises licenses awarded according to the population quota, the commission is authorized by statute to issue up to 50 additional on-premises licenses for establishments in a development district and may issue up to 10 additional licenses (in years designated by statute) in a resort area. A resort license may be transferred to another owner, but may not be transferred to another location.

ARGUMENTS:

For:

Escrowing an on-premises liquor license allows a business owner time to reopen the business, start a new business, or sell the license in order to recoup some of his or her business investment. Escrowed licenses can be transferred anywhere within the county of original issue, except in Kent County. At the time legislation allowing countywide transfers of escrowed liquor licenses was adopted, Kent County preferred to operate solely within the population quota system. Now, reportedly, many who were opposed to countywide transfers of escrowed licensees have seen that there could be some benefits. However, the City of Grand Rapids has indicated that it would prefer to not transfer its escrowed licenses to other locations within the county. House Bill 4232 would solve the dilemma by amending the liquor code to allow businesses and local governmental units to transfer escrowed licenses within Kent County, as all other counties currently do. But, the bill would continue to exclude the City of Grand Rapids. This means that Grand Rapids could not transfer one of its escrowed licenses to any other city or town in the county, nor could a business within the city apply to receive an escrowed license from another town or city.

Response:

In *State of Michigan v Wayne County Clerk*, 466 MICH 640 (2002), the Michigan Supreme Court ruled that where a statute cannot apply to other units of government, it fails as a general act and must therefore be construed to be a local act. The state constitution requires all local acts to be enacted by a super-majority vote of both houses (two-thirds of each house) and be approved by a majority of the local electors in a local referendum. The bill was crafted to exclude the City of Grand Rapids, and only the City of Grand Rapids, from the countywide transferability of escrowed liquor licenses. Perhaps the bill should be scrutinized further to determine if it could be considered a local act that would require passage by a super-majority of both houses and a local referendum.

Reply:

The state supreme court said, in the case cited, that “population-based statutes have been upheld against claims that they constitute local acts where it is possible that other municipalities or counties can qualify for inclusion if their populations change.” Other cities could conceivably reach the population level cited in this bill and so fall under its provisions. In the 2002 court case, the court was addressing a legislative requirement that a city of a specified size (Detroit) place a question on the ballot to change from an at-large city council to a single-member district plan. The court noted that no city could meet the population requirement by the date of the election (because no census would intervene). This is what made the law in question a local act in the court’s eyes.

For:

House Bill 4930 will enable the City of Grand Rapids to generate much needed revenue for their cemetery fund and parks and recreation fund. Currently, the city owns and operates a public golf course on land that is adjacent to a city cemetery. Under the terms of the deed, the donated land may be used by the city for parks and recreation purposes until such time as it is needed to expand the cemetery grounds; the city estimates that the golf course could be in use for another 30-40 years. Greens fees are kept low so to provide a place for low and middle income golfers to play; the city nets about \$25,000 a year in revenue from the golf course. The revenue generated from the golf course is used by the city to subsidize its cemetery and parks and recreation programs.

Some believe that allowing the golf course to sell beer and wine could solve several problems. First of all, the sale of beer and wine would boost revenue to the city which could be used to supplement dwindling state revenue sharing funds. Secondly, some patrons bring alcoholic drinks in their golf bags to consume while golfing. It is thought that allowing Indian Trails to have a tavern license will also allow city workers to more closely monitor illegal or excessive drinking on the premises. Licensing the establishment may discourage golfers from “bringing their own” because Michigan law does not permit patrons to bring alcohol onto licensed premises. Also, since it is illegal under the liquor code for licensees to sell alcoholic beverages to intoxicated patrons, and since employees are trained to recognize intoxication, it will be less likely that patrons would drink to the point of intoxication and then drive home. In addition, the legal sale of beer and wine may actually reduce the incidents of underage drinking on the golf course. Sales of alcohol to minors or consumption of alcohol on the premises by a minor are grounds for license sanctions under the code; therefore, the city will be compelled to strictly enforce the liquor laws. Of course, it is currently illegal for minors to consume alcohol anywhere in the state, but granting the golf course a tavern license will give golf course employees more authority in the eyes of golfers to enforce the laws.

Against:

House Bill 4930 represents another example of the continual erosion of the population quota system that was meant to prevent an over-saturation of places serving alcohol. Making more and more exceptions for municipally-owned entities also cuts into the profits of private businesses that have invested a lot of money to build up their clientele. Already the larger counties can get a Class C liquor license for a municipal golf course. Now this bill allows the City of Grand Rapids to have a tavern license for their city golf course. Either the population quota system should be adhered to or the legislature should consider changing to another system.

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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.