

Legislative Analysis



NEW LIQUOR LICENSEES: MINIMUM DISTANCE REQUIREMENT FROM PRESCHOOLS

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

House Bill 5856

Sponsor: Rep. Kate Segal

Committee: Regulatory Reform

Complete to 3-24-10

A SUMMARY OF HOUSE BILL 5856 AS INTRODUCED 2-23-10

The bill would amend the Liquor Control Code to extend the current requirement that applications for new (or transferred) retail liquor licenses be denied by the Liquor Control Commission (LCC) if the proposed location of the licensed establishment is within 500 feet of a church or school. Under House Bill 5856, this requirement would also apply to preschools.

A preschool would be a "child care center" licensed under the Child Care Organizations Act, 1973 PA 116. Under PA 116, a "child care center" is defined to mean, in general, a *facility, other than a private residence, receiving 1 or more preschool or school-age children for care for periods of less than 24 hours a day, where the parents or guardians are not immediately available to the child.* A child care center or day care center does not include a Sunday school or vacation bible school, programs offered to school-age children in subjects such as dance or music, or other activities for school-age children such as athletic programs or scouting.

Under the Code, licenses subject to this distance requirement include:

1. Licenses allowing for the sale for on-premise consumption (Class C, Tavern, Hotel, etc).
2. Specially Designated Distributor (SDD) licenses allowing for the sale for off-premise consumption of liquor and mixed spirit drinks.
3. If held in conjunction an on-premise license, a Specially Designated Merchant (SDM) license allowing for the sale for off-premise consumption of beer and wine.

Additionally, the Code provides that the distance requirement may be waived by the LCC. If the church or school (or preschool, under the bill) files an objection to the LCC's waiver of this requirement, the LCC is to hold a hearing prior to issuing the license. The LCC's rules (R 436.1951 et seq.) provide that upon determining that a proposed licensed establishment is located within 500 feet of a church or school, the LCC is to provide the church or school with notification of the application for a license. The church or school has 15 days to file a written objection with the LCC. If a church or school objects, their

objections are forwarded to the applicant, and a hearing is scheduled. The hearing is conducted under the contested case procedures of the Administrative Procedures Act. The waiver is to be granted by the LCC if the applicant shows "by competent, material, and substantial evidence" that a waiver "would not adversely affect the operation of the church or school." (Presumably, the LCC's rules would be amended to reflect the addition of preschools under the bill.)

MCL 436.1503

FISCAL IMPACT:

The bill could have an adverse fiscal impact on the state and local units of government, although any such impact is not likely to be significant. According to the Department of Human Services licensing database, there are approximately 4,700 licensed child care centers in the state. A good number of these centers are operated by (and co-located with) schools and churches, and are already covered under the distance requirements provided for in Section 503 of the Liquor Control Code. Where the bill expands upon current law, then, is through the addition of a minimum distance requirement from child care centers ("preschools") that are not co-located with schools or churches. The adverse fiscal impact on the state or local units of government would primarily occur through the additional licensing restrictions placed on applicants for a new or transferred retail liquor license.

The distance requirements are intended to restrict the location of liquor licensees and as such would serve to delay or, at worst, preclude the issuance of a liquor license to an applicant. However, any such adverse impact is mitigated through the waiver process and a finding that the operation of a liquor establishment "would not adversely affect the operation of" a preschool. Data isn't immediately available as to the number of Section 503 waivers granted or contested cases that heard, or the number of license applications that are denied because of the distance requirements under current law. According to the LCC's FY 2009 Performance Measures report, during FY 2008-09, the LCC issued 110 new on-premise licenses and 293 new off-premise licenses (excluding resort licenses, development district licenses, and other special acts licenses). The LCC also approved 1,132 retail transfers of ownership during FY 2008-09. All told, there are more than 17,000 retail businesses that currently have an on-premise or off-premise liquor license. The distance requirements of Section 503, currently and as amended by the bill, do not affect the licensing status or operation of existing liquor establishments when the existing license must be renewed. It would affect existing establishments, however, when there is a request for a transfer of ownership.

Legislative/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.