

## **SPECIAL LICENSE FOR BEER FESTIVAL WHERE BEERS AND BREWING ARE SHOWCASED**

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**House Bill 6187 (Substitute H-3)**  
**Sponsor: Rep. Mark Meadows**

**House Bill 6188 (Substitute H-3)**  
**Sponsor: Rep. Dave Hildenbrand**  
**Committee: Regulatory Reform**

### **First Analysis (6-12-08)**

**BRIEF SUMMARY:** The bill would create a special license for qualifying nonprofit organizations to sponsor beer festivals at which Michigan brewed beers would be showcased and available for sampling and purchase for consumption on and off the licensed premises.

**FISCAL IMPACT:** The bill would have an indeterminate fiscal impact on state and local units of government. A detailed discussion follows later in the analysis.

### **THE APPARENT PROBLEM:**

The Michigan Brewer's Guild is a nonprofit organization that, according to the Guild, "*exists to unify the Michigan brewing community; to increase sales of Michigan-brewed beer through promotions, marketing, public awareness and consumer education; and to monitor and assure a healthy beer industry within the state.*" To that end, under a liquor license known as a "special license," the Guild currently sponsors two beer festivals a year—one in winter and the other in summer (fourth Saturday in February and July, respectively). The two-day event in July will feature more than 200 beers from 30 different Michigan breweries.

Absent will be beers brewed at the state's brewpubs. Under provisions of the Michigan Liquor Code, a licensed brewpub can only sell its beer to consumers, whether for consumption on or off the premises, at its licensed establishment. Unlike brewers and microbrewers, brewpubs cannot sell to distributors who market to retailers, bars, and restaurants. The code also restricts special license holders to buying beer only from licensed retail establishments or from distributors.

Beer enthusiasts have long sought changes to the liquor code that would allow brewpubs the ability to participate in beer festivals. Legislation has been offered once more to amend the liquor code to make that possible.

## ***THE CONTENT OF THE BILLS:***

The bills would allow an organization holding a beer festival where beers are being showcased to apply for a special license, and allow a licensed brewpub, microbrewer, or brewer to sell directly to that organization. The bills are tie-barred to each other, meaning that neither can effect unless both are enacted.

In general, alcoholic beverages can only be sold for consumption on the premises of licensed restaurants, bars, and hotels. The sale and delivery of alcoholic beverages to these licensees are strictly regulated under the liquor code and may only be done by a person licensed as a wholesaler (beer, wine, and mixed spirit drink) or authorized distribution agent (spirits). Under rules of the Liquor Control Commission, however, qualifying nonprofit organizations may apply for a special license that allows for the sale of beer, wine, and/or spirits for consumption on the licensed premises for a limited period of time; for example, a fund-raising event. A special licensee is allowed under the rules to purchase alcoholic beverages from any retail establishment licensed to sell for off-premises consumption; in addition, beer can also be purchased from a licensed wholesaler and wine can be purchased from a wholesaler or licensed wine maker or small wine maker.

Specifically, each bill would do the following:

House Bill 6188 would add a new section to the Michigan Liquor Code (436.1526) to allow the Michigan Liquor Control Commission to issue a special license to a nonprofit entity composed primarily of brewers, microbrewers, and brewpubs conducting a beer festival that had as its primary purpose the showcasing of beer and its production. "Beer festival" would be defined in the bill as an event at which the various types and kinds of beer and the production of that beer were showcased to the general public. The public could purchase and sample the beer being showcased for consumption on the licensed premises.

There would be a \$25 application fee per day of an event. The beer festival special license would restrict the holder to no more than six events per calendar year. The bill would allow the holder of a special license for a beer festival to buy a quantity of beer determined appropriate by the commission directly from any licensed brewpub for consumption only at the licensed event.

[Note: House Bill 6188 as written appears to conflict with existing provisions of the liquor code pertaining to special licenses. For instance, the liquor code currently allows qualifying organizations, including an auxiliary of an organization, up to 12 special licenses per calendar year. The special license fee is \$50 per day, or \$25 per day for nonprofit associations meeting certain criteria, MCL 436.1525(1)(r). A special license is a time-restricted license and is valid for a 24-hour period; therefore, one license is needed for each day of an event. As an example, a church holding a three-day event with a beer tent would need three special licenses at either \$50 or \$25 per day depending on the status of the nonprofit organization. The bill does not define "event," but infers a multi-

day festival. Therefore, it is unclear how the bill's use of the terms "special license" and "event" would be reconciled with existing law regarding special licenses.]

House Bill 6187 would also add a new section to the Michigan Liquor Code (MCL 436.1413) to allow direct sales of beer by a licensed brewpub to an organization conducting a beer festival under a special license created by House Bill 6188. The Liquor Control Commission would determine the appropriate amount of beer that could be sold directly to a special licensee by a brewpub, microbrewery, or brewer.

### ***FISCAL INFORMATION:***

The bill would have an indeterminate fiscal impact on the state and on local units of government, depending on the number of licenses granted under the bill, as compared to the number of special licenses issued by the Michigan Liquor Control Commission (MLCC) for similar events under current law. Currently, the Liquor Control Code permits the MLCC to issue a "special license" to qualifying nonprofit organizations. The fee is \$50 per day for organizations established less than one year and \$25 per day for organizations established for one year or more. (There's an additional 15 percent fee for Sunday if spirits are sold.) Current law limits organizations to 12 special licenses, with one license valid for one day. Because the bill uses the phrase "special license" to denote a license issued for a beer festival, it is not entirely clear how it interacts with current (and long standing) law regarding other special licenses issued to nonprofit organizations. Apparently, there is no data indicating the number of events licensed under the current system. To the extent the bill doesn't alter the number of events (days) held in a year, the bill would not impact liquor license fee revenue. However, to the extent the bill results in the proliferation of these festivals, the bill would increase liquor license revenue. Under the Liquor Control Code, MCL 436.1525, fee revenue would be credited to the MLCC (41.5 percent), local law enforcement (55 percent), and alcoholism prevention programs.

### ***ARGUMENTS:***

#### ***For:***

Michigan tightly regulates the sale and delivery of alcoholic beverages within the state. In the beer and wine industry, a three-tier system composed of manufacturers, distributors, and retailers restricts a person licensed in one category from also being licensed to engage in either of other two categories. For instance, in general, a manufacturer cannot also be licensed as retailer or distributor. But the code does contain a few narrow exemptions.

Under the liquor code, licensed brewers and microbrewers can sell their products to distributors who then sell to retailers such as stores, bars, and restaurants. Nonprofit organizations operating under a special license can buy beer directly from retail licenses and/or from distributors. However, since brewpubs are prohibited from selling their beer to distributors, and can only sell their products at their licensed location, a special license holder cannot purchase their products for resale at an event.

This is especially problematic for the Michigan Brewer's Guild, which represents many brewpubs in the state, because it cannot showcase, or offer for sampling or for sale, the craft beers brewed by the state's brewpubs. The bills would resolve the problem by creating a beer festival special license that would allow organizers to buy directly from a brewpub (though the Liquor Control Commission would have the authority to limit the amount). Only those nonprofits qualifying under House Bill 6188 would be able to purchase directly from brewpubs; other nonprofits sponsoring events under a special license would still be restricted to purchasing beer only from licensed retail outlets and licensed distributors. Further, the bill would restrict a beer festival special license holder to no more than six events each year.

Though the bills do create an exception to the historic three-tier system, it is narrow in application and therefore not expected to negatively affect retailers and distributors. It would, however, level the playing field for brewpubs and allow them to showcase their wares at beer festivals along with other instate brewers.

The bills could also have an indirect impact on tourism. The craft beer industry is one of tremendous potential growth. Michigan already has established itself as one of the finest states for craft brewers. Similarly to wine lovers, beer enthusiasts travel to breweries, microbreweries, and brewpubs to savor fresh brewed beer in the many flavors and styles offered. Allowing brewpubs an opportunity to have their products showcased at beer festivals within the state could spur tourism to the towns the brewpubs are located, just as the festivals have done for other breweries.

***Response:***

The committee substitute adopted for House Bill 6188 still does not resolve conflicts with other provisions of law concerning special licenses. For instance, it still is not clear how the provision specifying that "the special license shall not allow more than six events per calendar year" would be interpreted. Would it mean that as a category, no more than six beer festival events could be held in the state per year in total even if different organizations sponsored the events? Or that each special license issued to a qualifying organization would allow the organization to hold up to six events?

Conflicts would exist under either of these interpretations. Currently, a special license is only good for a 24-hour period, and qualifying nonprofits can receive up to 12 special licenses a year. One license must be used for each day of an event; thus, a two-day event would need two licenses, and so on. The bill, however, implies that an event would be multiple days in duration. If interpreted in context with other provisions of law, an organization would still be restricted to a total of 12 days per year, regardless of how many "events" were held. However, it could be argued that the provision would allow each qualifying organization to obtain up to 12 special licenses a year, with each license supporting six "events," with these "events" being an unrestricted number of days in duration. Under this interpretation, a single qualifying organization could conceivably hold up to 72 events of varying length of days per event.

Allowing for more than 12 days per year would violate the purpose and intent for which special licenses were created—being a short-term license to be used by nonprofits as part

of fundraising efforts for charitable purposes. Though the Michigan Beer Guild, and any other group made up of qualifying individuals, may have nonprofit status, the Guild's stated purpose is to increase sales of its members' products. To allow these groups to have "events" spanning more than 12 days would be contrary to the spirit of, and a departure from, the historic use of special licenses.

Perhaps a tweaking of the language is in order to more clearly set forth both the intent and the application of the bill.

***POSITIONS:***

The Michigan Brewer's Guild supports the bills. (6-10-08)

The Michigan Restaurant Association indicated support for the bills. (6-10-08)

The Michigan Beer and Wine Wholesalers indicated support for the bills. (6-10-08)

The Michigan Liquor Control Commission is neutral on the bills. (6-10-08)

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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.