

## AMEND LIQUOR CODE: SECONDARY LOCATION PERMITS AND RELATED AMENDMENTS

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**House Bill 4895 as enacted**  
**Public Act 84 of 2016**  
**Sponsor: Rep. Aric Nesbitt**

Analysis available at  
<http://www.legislature.mi.gov>

**Senate Bill 344 as enacted**  
**Public Act 137 of 2016**  
**Sponsor: David Hildenbrand**

**Senate Committee: Regulatory Reform**  
**House Committee: Regulatory Reform**

**Complete to 2-5-18**

**BRIEF SUMMARY:** House Bill 4895 amends the Michigan Liquor Control Code to allow a merchant who holds a specially designated merchant (SDM) license at a location where there are fuel pumps to obtain a *secondary location permit* from the Liquor Control Commission (LCC) under certain circumstances. An SDM license allows sales of beer and wine for off-premises consumption.

Senate Bill 344 amends the Michigan Liquor Control Code to allow SDM licensees to apply for a specially designated distributor (SDD) license, and vice-versa.

**FISCAL IMPACT:** House Bill 4895 would have a nominal, likely neutral, fiscal impact on the LCC, and could cause a nominal increase of revenue for the state's general fund. Senate Bill 344 would not seem to have a significant fiscal impact on the state or local units of government. (See *Fiscal Information*, below, for further discussion.)

### **THE APPARENT PROBLEM:**

#### House Bill 4895

Gas stations that are allowed to sell liquor must meet certain requirements, including minimum inventory requirements. Stores that have a gas station located adjacent to their main store argue that the station should not be subject to the same minimum inventory requirements as stand-alone stations and instead should be treated as an extension of the main store.

#### Senate Bill 344

Applicants for an SDM license are limited under the Code to specially designated distributors and retail vendors licensed for on-premises consumption. However, in the almost 30 years since the Code was enacted, numerous other types of businesses have received SDM licenses, allowing them to sell beer and wine for off-premises consumption. Some have argued that this practice should be reflected in the Code.

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

House Bill 4895 amends the Michigan Liquor Control Code to allow a merchant who holds a specially designated merchant (SDM) license at a location where there are fuel pumps to obtain a ***secondary location permit*** from the Michigan Liquor Control Commission (LCC) under certain circumstances. An SDM license allows sales of beer and wine for off-premises consumption.

The bill also revises parking space requirements for SDMs that own or operate motor fuel pumps and reduces the minimum distance that fuel pumps must be from the place where alcohol is purchased from 50 feet to 5 feet.

Under the bill, if a specially designated merchant's licensed premises are a ***primary location***, the commission can issue a secondary location permit to the specially designated merchant, as an extension of the SDM license, for the sale of beer, wine, or both, at the ***secondary location***.

***Primary location*** means licensed premises, with at least 5 feet between the fuel pumps and the site of payment for alcoholic liquor, that meets one of the following:

- It is located in a commercial establishment, or a group of such establishments operated as a unit, that is related in location, size, and type of shop to the trade area that the unit serves, that consists of not less than 50,000 square feet of leasable retail space, and that has access to off-street parking spaces. (HB 4895 changed this parking requirement from one that called for 5 private off-street parking spots for every 1,000 square feet of gross leasable retail space.)
- It maintains a minimum inventory on the premises, excluding alcoholic liquor and motor vehicle fuel, of not less than \$250,000, at cost, of those goods and services customarily marketed by approved types of businesses.

***Secondary location*** means a business operation of the holder of a SDM license for a primary location, or a subsidiary or affiliate of that license holder, that takes place on real property, that includes at least one building and one or more motor vehicle fuel pumps, and that is located on or adjacent to the primary location. Upon commission approval of the secondary location permit, the secondary location is considered licensed premises and an extension of the licensed primary location. This means that, after an SDM is issued a secondary location permit, the primary location and the secondary location are considered one premises for purposes of meeting the \$250,000 minimum inventory threshold, described above.

The LCC would only be able to issue a secondary location permit to an SDM when both of the following apply:

- The holder of the SDM license for the primary location premises, or a subsidiary or affiliate of the license holder, owns or leases the secondary location.

- The holder of the SDM license for the primary location, or a subsidiary or affiliate of the license holder, owns or operates motor vehicle fuel pumps at the secondary location.

After an SDM is issued a secondary location permit, if the licensed premises are a primary location that does not meet the neighborhood shopping center condition, the primary location and the secondary location would be considered one premises for purposes of meeting the existing \$250,000 minimum inventory threshold.

An applicant for a secondary location permit would be required to submit an application to the commission in a format provided by the commission, accompanied by an application and initial permit fee of \$100. The application would have to include a diagram of the secondary location with building dimensions and a depiction of the minimum five-foot distance measurement between the motor fuel pumps site of payment and selection of alcoholic liquor. The secondary location permit would expire on the same date as the SDM license and could be renewed in conjunction with that license by the SDM holder by submitting a permit renewal fee of \$100 and a completed renewal application.

After issuance of a secondary location permit, if a subsidiary or affiliate of the SDM owns or operates the secondary location and the subsidiary or affiliate shares the same ultimate controlling party with that SDM, the secondary location may receive and sell beer, wine, or both under the specially designated merchant's license. The holder of that secondary location permit would be required to prominently display the permit at the secondary location in the point-of-sale area.

MCL 436.1541

#### Senate Bill 344

Section 533 of the Code limits applicants for an SDM license to specially designated distributors and retail vendors licensed to sell for on-premises consumption. Despite this language, in the almost 30 years since the Code was enacted, numerous other types of businesses have received SDM licenses, allowing them to sell beer and wine for off-premises consumption. The bill reflects this practice and authorizes the LCC to issue an SDM license to a person who does not hold any other type of liquor license.

In addition, the bill permits a person applying for an SDM license not in conjunction with an on-premises license, or a licensed SDM or Class B hotel, to apply for a license to sell packaged liquor for off-premises consumption.

MCL 436.1533

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

House Bill 4895 would have a nominal, likely neutral, fiscal impact on the LCC, to the extent that the LCC would incur administrative costs to process applications for Second

Location Permits and these costs would be offset by the \$100 initial and renewal permit fees.

The bill could cause a nominal increase of revenue for the state's general fund to the extent, if at all, that the increased retail locations permitted by the bill result in marginal increases in the sale of beer and wine. Wholesale excise taxes on beer and wine generated approximately \$39.2 million and \$12.5 million, respectively, in revenue deposited into the general fund during FY 2013-14. However, increased sales of beer and wine could also result in increased demand for public safety services, which could partially or wholly offset increased excise tax revenue.

Senate Bill 344 would not seem to have a significant fiscal impact on the state or local units of government, as it appears to modify the statute to more accurately reflect the actual practices implemented by the LCC based upon administrative rules.

### ***ARGUMENTS:***

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

As stated above, proponents of the bills argue that gas stations which are directly affiliated with a licensee and are located adjacent to their main building should be treated as being an extension of the primary location for purposes of determining eligibility for a license under the act, as they are owned or operated by the same entity.

#### ***Against:***

Opponents of the bill did not take issue with the argument that a gas station location could be treated as an extension of a primary licensee, but rather with the size requirements for the primary location, arguing that it favored large retailers such as Meijer and Walmart over smaller stores which are often locally owned.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.