

LIQUOR CODE AMENDMENTS: SPECIALLY DESIGNATED MERCHANT LICENSES

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Senate Bill 929 (substitute H-2)
Sponsor: Sen. Arlan Meekhof
House Committee: Regulatory Reform
Senate Committee: Michigan Competitiveness
Complete to 9-21-16

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

REVISED SUMMARY:

Senate Bill 929 would amend several sections of the Michigan Liquor Control Code, primarily by revising eligibility requirements relating to Specially Designated Merchant (SDM) licenses.

An SDM license allows the holder to sell beer and/or wine for off-premises consumption. (A specially designated distributor (SDD) license allows the holder to sell spirits and mixed spirit drink in its original package for off-premises consumption.)

Approved businesses

Under the bill, the Liquor Control Commission would be prohibited from issuing a new SDM license or transferring an existing SDM license unless the applicant is an approved type of business. To be an approved type of business, the applicant must meet one or more of the following:

- The applicant holds and maintains either a retail food establishment or extended retail food establishment license under The Food Law (PA 92 of 2000).
- The applicant holds, or the commission approves the issuance of, one of the following:
 - A specially designated distributor (SDD) license.
 - A Class C license.
 - A Class A hotel license (beer and wine only).
 - A Class B hotel license (beer, wine, spirits, and mixed drinks).
 - A club license.
 - A tavern license.
 - A Class G-1 license. (18-hole golf course of at least 5,000 yards to sell beer, wine, spirits, and mixed drinks for consumption on the premises to members only.)
 - A Class G-2 license. (18-hole golf course of at least 5,000 yards to sell beer and wine only for consumption on the premises to members only.)

As defined in The Food Law, "Retail food establishment" means an operation that sells or offers to sell food directly to a consumer. Retail food establishment includes both a retail grocery and a food service establishment, but does not include a food processor.

"Extended retail food establishment" means a retail grocery that serves or provides an unpackaged food for immediate consumption and provides customer seating in the food service area.

"Retail grocery" means an operation that sells or offers to sell food to consumers for off-premises consumption. Food for off-premises consumption does not include take-out food intended for immediate consumption.

SDM license quota

For cities, incorporated villages, or townships, the commission could only issue one SDM license for each 1,000 residents. This quota would not apply to any of the following:

- An applicant for an SDM license that is an applicant for or the holder of one of the following licenses:
 - A Class C license.
 - A Class A hotel license.
 - A Class B hotel license.
 - A club license.
 - A tavern license.
 - A Class G-1.
 - A Class G-2 license.
 - An applicant for or the holder of an SDM license whose licensed establishment has at least 20,000 square feet and its gross receipts derived from the sale of food are at least 20% of the total gross receipts; and/or is a pharmacy as defined in the Public Health Code (MCL 333.17707).
- A secondary location permit issued to an SDM who also has motor vehicle fuel pumps and meets the appropriate criteria.
- An SDM license issued to an applicant who applies for an SDM license within 60 days of the bill's effective date and is also a retail dealer under the Motor Fuels Quality act with a license issued under that act to engage in the transferring, selling, dispensing, or offering for sale gasoline, diesel fuel, biodiesel, biodiesel blend, or hydrogen fuel. A license is required for each separate retail outlet a person operates, and a copy of that license is required to be submitted with the SDM application.
- An SDM license issued to a marina that meets applicable criteria.

As defined in the Public Health Code, "pharmacy" means a building or part of a building in which the practice of pharmacy is conducted. For the purpose of a duty placed on a pharmacy under this part, "pharmacy" means the person to which the pharmacy license is issued, unless otherwise specifically provided.

"Practice of pharmacy" means a health service, the clinical application of which includes the encouragement of safety and efficacy in the prescribing, dispensing, administering, and use of drugs and related articles for the prevention of illness, and the maintenance and

management of health. Practice of pharmacy includes the direct or indirect provision of professional functions and services associated with the practice of pharmacy.

As defined in the Motor Fuels Quality Act, "Retail dealer" means a person who owns, leases, operates, controls, or supervises an establishment at which motor fuel is sold or offered for sale to the public.

Waiver of Quota

The commission may waive the one SDM license per 1,000 population quota if there is no existing SDM within two miles of the applicant, as measured along the nearest traffic route. For an applicant who applies for an SDM license within 60 days of the bill's effective date and is licensed under the Motor Fuel Quality Act as detailed above, this quota must be waived.

Transfer of Licenses

A specially designated merchant license issued under this section may be transferred to an applicant whose proposed operation is located within any local governmental unit in a county in which the specially designated merchant license was located. If the local governmental unit within which the former licensee's premises were located spans more than one county, a specially designated merchant license may be transferred to an applicant whose proposed operation is located within any local governmental unit in either county.

If an SDM license is transferred to a local governmental unit other than the local governmental unit which originally contained that SDM licensee, the commission must count that transferred SDM license against the local governmental unit originally issuing the specially designated merchant license.

Except as otherwise provided below, the quota for SDM licenses does not bar the right of an existing specially designated merchant to renew the specially designated merchant license or transfer the specially designated merchant license. This subsection applies to a specially designated merchant license issued or renewed before, on, or after the effective date of the amendatory act of the bill.

An SDM license issued to a licensee under the provision that the population quota be waived if there is no existing SDM within two miles of the applicant, as measured along the nearest traffic route, or an SDM license issued after the effective date of the bill to one of the following would be nontransferable:

- An applicant for an SDM license that is an applicant for or the holder of one of the following licenses:
- A Class C license.
- A Class A hotel license.
- A Class B hotel license.
- A club license.
- A tavern license.
- A Class G-1.

- A Class G-2 license.
- An applicant for or the holder of an SDM license whose licensed establishment has at least 20,000 square feet and its gross receipts derived from the sale of food are at least 20% of the total gross receipts, and/or is a pharmacy as defined in the Public Health Code (MCL 333.17707).

For purposes of population for the quota, population is determined by one of the following, whichever has been done most recently:

- The last federal decennial census
- A special census under The Home Rule City Act (MCL 117.6)
- The Glenn Steil State Revenue Sharing Act of 1971 (141.907)
- The latest census and corrections published by the United States Department of Commerce, Bureau of the Census

SB 929 also would delete current provisions relating to eligibility for an SDM license that are contingent on that licensee being located within a municipality that meets certain population requirements.

SDM licenses for marinas

Presently, a marina that is situated on one of the Great Lakes, on an inland waterway or tributary connected to a Great Lake, or on a Great Lake connecting waterway may be licensed as an SDM or SDD with motor vehicle fuel pumps or a financial interest in motor vehicle fuel pumps if the marina's primary business is the sale of boats or the provision of services and supplies to recreational power cruisers and sailboats of the type that typically travel on the Great Lakes, and the fuel pumps are used for dispensing fuel only to these boats. SB 929 would add a requirement that the marina also be an approved type of business, as detailed above.

The bill also would not allow the MLCC to prohibit an applicant for, or the holder of, an SDM license from owning or operating motor fuel vehicle pumps on, or adjacent to, the licensed premises, if the site of payment for the alcoholic liquor is at least five feet away from where fuel is dispensed. However, this would not apply to an SDM license issued to a marina that is also an approved business.

Grape and Wine Industry Council

SB 929 would add language specifying that wholesale vendor license and license renewal fees would not be credited to the Grape and Wine Industry Council. Presently, all license and license renewal fees other than retail license and license renewal fees are credited to the council.

FISCAL IMPACT:

The bill would have indeterminate fiscal impacts on the Department of Licensing and Regulatory Affairs and on local units of government. The bill would change the conditions for the issuance of Specially Designated Merchant (SDM) Licenses, which may cause the

number of SDM license applications to change. These changes in the volume of SDM license applications would affect the amount of revenue that the Michigan Liquor Control Commission receives. This would also impact the amount of money that local governments receive from liquor law enforcement grants, which are roughly equal to 55% of liquor licensure fee revenues collected within each jurisdiction. The bill also stipulates that wholesale vendor license fees and license renewal fees are to be deposited into the Liquor Control Enforcement and License Investigation Revolving Fund, established by this bill within the Treasury. The MLCC would expend money from the fund (on appropriation) for enforcement of the Michigan Liquor Control Code, rules promulgated under Michigan Liquor Control Code, and for license investigations. However, no more than 35% of the money appropriated to the fund can be used for execution of the licensing provisions of the act.

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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.