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## BILL ANALYSIS



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Senate Bill 929 (as introduced 4-29-16)  
Sponsor: Senator Arlan Meekhof  
Committee: Michigan Competitiveness

Date Completed: 5-10-16

**CONTENT**

**The bill would amend the Michigan Liquor Control Code to do the following:**

- **Prohibit the Michigan Liquor Control Commission (MLCC) from issuing or transferring a specially designated merchant (SDM) license unless the applicant held a retail food establishment license, an on-premises liquor license, or a specially designated distributor (SDD) license.**
- **Establish a quota of one SDM license per 1,000 of population in a city, incorporated village, or township.**
- **Make exceptions to that quota for an applicant that held an on-premises liquor license; an applicant that met square footage and food sales criteria; an applicant that met a prescription drug sales level; and a secondary location permit.**
- **Permit the MLCC to waive the quota if no SDM existed within two miles of an applicant.**
- **Require the MLCC to waive the quota if a local unit's quota had been exhausted on the bill's effective date and the applicant were a licensed retail fuel dealer.**
- **Provide that the MLCC could not prohibit an applicant for or holder of an SDM license from owning or operating fuel pumps on or adjacent to the licensed premises if the site of payment were at least five feet from where fuel was dispensed.**
- **Create the "Liquor Control Enforcement and License Investigation Revolving Fund", and direct wholesale vendor license fees to that Fund.**
- **Provide that a retailer would be subject to enforcement action if it made a payment to a wholesaler, the MLCC, or the State that was dishonored for insufficient funds.**

(A specially designated merchant is authorized to sell beer or wine, or both, at retail for consumption off the licensed premises.)

The bill would take effect 90 days after enactment.

(Please note: Public Act 84 of 2016 amends Section 541 of the Code, which governs an SDM's or SDD's ownership or operation of motor vehicle fuel pumps. Although Public Act 84 will take effect on July 11, 2016, the following summary refers to the amended provisions as current law. The changes made by Public Act 84 are described in the **BACKGROUND**, below.)

**SDM License: Approved Type of Business**

Currently, a retail vendor licensed under the Code to sell for on-premises consumption may apply for a license as a specially designated merchant. The bill would delete this provision.

The bill would prohibit the MLCC from issuing a new SDM license or transferring an existing SDM license unless the applicant was an approved type of business. An applicant would not be an approved type of business unless it met one or more of the following conditions:

- The applicant held and maintained a retail food establishment license under the Food Law.
- The applicant held and maintained an extended retail food establishment license under the Food Law.
- The applicant held a specially designated distributor license or the MLCC approved the issuance of an SDD license to the applicant.
- The applicant held or the MLCC approved the issuance to the applicant of one of the following types of licenses to the applicant: a class C license; a class A hotel license; a class B hotel license; a club license; a tavern license; a class G-1 license; or a class G-2 license.

(The Food Law defines "retail food establishment" as an operation that sells or offers to sell food directly to a consumer; the term includes a grocery store and a food service establishment (a fixed or mobile restaurant, coffee shop, cafeteria, drive-in, rental hall, catering kitchen, delicatessen, or similar place where food or drink is prepared for direct consumption through service on the premises or elsewhere, and any other eating or drinking establishment or operation where food is served or provided for the public). "Extended 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.)

Under the Liquor Control Code, a class C licensee may sell at retail beer, wine, mixed spirit drink, and spirits for on-premises consumption. A class A hotel may sell beer and wine for on-premises consumption. A class B hotel may sell beer, wine, mixed spirit drink, and spirits for on-premises consumption. A club license allows the sale, for on-premises consumption, of beer, wine, mixed spirit drink, and spirits only to bona fide club members. A tavern is a place licensed to sell at retail beer and wine for on-premises consumption. A class G-1 license authorizes the retail sale of beer, wine, mixed spirit drink, and spirits for on-premises consumption at a golf course. A class G-2 license authorizes the retail sale of beer and wine for on-premises consumption at a golf course.

A specially designated distributor is a person engaged in an established business licensed by the Commission to distribute spirits and mixed spirit drink in the original package for off-premises consumption.)

The Code also allows an SDD to apply for a license as an SDM. The bill would retain this provision.

#### SDM License Quota

Except as provided below, in cities, incorporated villages, or townships, the bill would allow the MLCC to issue only one SDM license for each 1,000 of population.

This quota would not apply to an applicant for an SDM license that was an applicant for or the holder of a class C, class A hotel, class B hotel, club, tavern, class G-1, or class G-2 license.

The quota also would not apply to an applicant for or the holder of an SDM license whose licensed establishment met one or more of the following conditions:

- The licensed establishment was at least 20,000 square feet, and its gross receipts from the sale of food were at least 20% of the total gross receipts.
- The licensed establishment's gross receipts from the sale of prescription drugs were at least 20% of the total gross receipts.

In addition, the quota would not apply to a secondary location permit issued to an SDM under Section 541 (described below in **BACKGROUND.**)

The MLCC would be permitted to waive the quota if there were no existing SDM within two miles of the applicant, measured along the nearest traffic route.

The Commission would be required to waive the quota if all of the following applied:

- The proposed licensed establishment was located in a city, incorporated village, or township in which the quota of one SDM license per 1,000 of population was exhausted as of the bill's effective date.
- The applicant applied for the SDM license within 60 days after that date.
- The applicant was a retail dealer holding a license issued under Section 6(1) of the Motor Fuels Quality Act, and included a copy of the license under that Act with its application.

(Under Section 6(1) of the Motor Fuels Quality Act, before transferring, selling, or dispensing gasoline, diesel fuel, biodiesel, biodiesel blend, or hydrogen fuel, a distributor or retail dealer must obtain a license from the Department of Agriculture and Rural Development for each retail outlet operated by that person.)

An SDM license could be transferred to an applicant whose proposed operation was located within any local governmental unit in a county in which the SDM license was located. If the local governmental unit spanned more than one county, the SDM license would be transferred to an applicant whose proposed operation was located within any local governmental unit in either county.

If an SDM license were transferred to a local governmental unit other than the one in which the license originally was issued, the MLCC would have to count that transferred SDM license against the local governmental unit originally issuing the license.

The bill specifies that the quota would not bar the right of an existing SDM to renew or transfer the SDM license. This would apply to an SDM license issued or renewed before, on, or after the bill's effective date. An SDM license would not be transferrable as to location, however, if it were issued after that date under an exception to the quota for 1) an applicant that was an applicant for or holder of an on-premises license (listed above), or 2) an applicant that met the square footage/gross receipts criteria.

For purposes of the quota, population would be determined by the last Federal decennial census, by a special census under the Home Rule City Act or the State Revenue Sharing Act, or by the latest census and corrections published by the U.S. Department of Commerce, Bureau of the Census, whichever was latest.

#### SDM Licensee Ownership or Operation of Fuel Pumps

Section 541 governs an SDD or SDM licensee's ownership or operation of motor vehicle fuel pumps adjacent to or on the licensed premises.

Under the bill, the Commission could not prohibit an applicant for or the holder of an SDM license from owning or operating motor vehicle fuel pumps on or adjacent to the licensed premises if the site of payment were at least five feet from the point where the fuel was dispensed.

Currently, subject to various exceptions, Section 541 prohibits the MLCC from allowing an applicant for or holder of an SDD license or an SDM license to own or operate motor fuel pumps on or adjacent to the licensed premises, unless both of the following conditions are met:

- The applicant or licensee either is located in a neighborhood shopping center and/or maintains a minimum inventory on the premises, excluding alcoholic liquor and motor fuel, of at least \$250,000 of those goods and services customarily marketed by approved types of businesses.
- The site of payment and selection of alcoholic liquor is at least five feet from the point where fuel is dispensed.

The Commission may not prohibit an applicant for or the holder of an SDD or SDM license from owning or operating motor fuel pumps on or adjacent to the licensed premises if 1) the applicant is located in a township with a population of 7,000 or less that is not contiguous with any other township; 2) the applicant or licensee maintains a minimum inventory on the premises, excluding liquor and fuel, of at least \$12,500 of those goods and services customarily marketed by approved types of businesses; and 3) the applicant has the approval of the township.

Under the bill, these provisions would no longer apply to an applicant for or holder of an SDM license.

The bill also would delete provisions under which Commission may not prohibit an applicant for or the holder of an SDM license from owning or operating motor vehicle fuel pumps on or adjacent to the licensed premises if both of the following conditions are met:

- The applicant or holder is located in 1) a city, incorporated village, or township with a population of 3,500 or less and a county with a population of 31,000 or more; 2) a city, incorporated village, or township with a population of 4,000 or less and a county with a population of less than 31,000; or 3) a township in which the applicant or licensee is the only person that owns or operates fuel pumps on the date of application.
- The applicant or licensee maintains a minimum inventory on the premises, excluding liquor and fuel, of at least \$10,000 of those goods and services customarily marketed by approved types of businesses.

#### Wholesale Vendor Fees; Proposed Fund

The Code requires all license and license renewal fees, other than retail license and license renewal fees, to be credited to the Grape and Wine Industry Council. Under the bill, wholesale vendor license and license renewal fees instead would have to be deposited into the proposed Liquor Control Enforcement and License Investigation Revolving Fund.

The bill would create that Fund within the State Treasury. The MLCC could spend money from the Fund, upon appropriation, only for enforcement of the Code and the rules promulgated under it, and for license investigations. The Commission could not use more than 35% of the money appropriated to the Fund for license investigations.

The State Treasurer would have to direct the investment of the Fund, and credit to it interest and earnings from Fund investments. Money in the Fund at the close of the fiscal year would have to remain in the Fund and not lapse to the General Fund.

#### Dishonored Payment

The bill provides that a retailer or a retailer's clerk, servant, agent, or employee who made a payment to a wholesaler, the MLCC, or the State by any means that had been dishonored by a financial institution for lack of sufficient funds would be subject to enforcement action by the Commission for issuing a dishonored payment instrument.

MCL 436.1533 et al.

## **BACKGROUND**

Public Act 84 of 2016 amends Section 541 of the Michigan Liquor Control Code, effective July 11, 2016, to do the following regarding the ownership or operation of motor vehicle fuel pumps by a specially designated distributor or a specially designated merchant:

- Reduce the minimum distance required between the location where fuel is dispensed and where liquor is sold from 50 to five feet, for an SDD or SDM that is located in a neighborhood shopping center or has a minimum required inventory.
- Allow an SDM to own or operate motor vehicle fuel pumps if the licensee is the only person in a township that owns or operates fuel pumps.
- Allow the issuance of a secondary location permit to an SDM whose premises are a "primary location" where motor vehicle fuel may be sold.

Specifically, a secondary location permit may be issued to an SDM that either 1) is in a neighborhood shopping center; or 2) maintains a minimum inventory on the premises, excluding alcoholic liquor and motor vehicle fuel, of at least \$250,000 of those goods and services customarily marketed by approved types of business (provided, in either case, that the distance between the payment location and the fuel pumps is at least five feet). If one or both of these conditions are met, the licensed premises are a "primary location".

A secondary location is a business operation of the SDM license holder, or a subsidiary or affiliate of the licensee, that takes place on real property that includes at least one building and one or more fuel pumps, and is located on or adjacent to the primary location. The secondary location permit is considered an extension of the license and allows the sale of beer, wine, or both, at the secondary location.

Legislative Analyst: Suzanne Lowe

## **FISCAL IMPACT**

The bill would have an indeterminate fiscal impact on the Michigan Liquor Control Commission within the Department of Licensing and Regulatory Affairs, and on local units of government. Generally speaking, the bill would make changes to the criteria under which licenses are issued, but would not fundamentally change the process through which MLCC reviews and approves licenses. To the extent that the proposed changes increased or decreased the number of license applications, MLCC's revenue and expenditures would follow. From the standpoint of local government, MLCC remits to local units of government 55% of license revenue received from licensees in each jurisdiction to be used for law enforcement purposes. An increase or decrease in the number of licenses would affect the amount of this revenue as well.

The bill also would create the Liquor Control Enforcement and License Investigation Revolving Fund, which would receive revenue from wholesale vendor licenses. The Fund could be used for enforcement of the Liquor Control Code and license investigations; however, only 35% of the money in the Fund could be used for the latter purpose. In fiscal year (FY) 2014-15, about \$170,000 in these fees was collected. Under current law, these fees are credited to the Grape and Wine Industry Council, which received a total of about \$670,000 from all nonretail license fees in FY 2014-15.

Fiscal Analyst: Josh Sefton

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.