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BILL ANALYSIS

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Senate Bill 929 (as enacted)
Sponsor: Senator Arlan Meekhof
Senate Committee: Michigan Competitiveness
House Committee: Regulatory Reform

PUBLIC ACT 434 of 2016

Date Completed: 11-14-17

CONTENT

The bill amended the Michigan Liquor Control Code to do the following with respect to specially designated merchant licenses (which authorize the retail sale of beer or wine, or both, for consumption off the licensed premises):

- Prohibit the Michigan Liquor Control Commission (MLCC) from issuing or transferring a specially designated merchant (SDM) license to an applicant that is not an "approved type of business".
- Include as an "approved type of business" an applicant that is a retail food establishment; an applicant that holds or is approved for a specially designated distributor license; and an applicant that holds or is approved for a license that allows the sale of alcoholic beverages for on-premises consumption.
- 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 holds an on-premises liquor license; an applicant that meets square footage and food sales criteria; an applicant whose licensed establishment is also a pharmacy; a secondary location permit; and an SDM license issued to a marina.
- Require the MLCC to waive the quota for a retail dealer licensed under the Motor Fuels Quality Act, if an application for an SDM license was submitted within 60 days after the bill's effective date.
- Permit the MLCC to waive the quota if no SDM exists within two miles of an applicant.
- Permit an SDM license to be transferred to an applicant whose proposed operation is within any local unit in a county in which the SDM license was located, with certain exceptions.
- Provide that the MLCC may 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 and selection of liquor is at least five feet from where fuel is dispensed.
- Revise conditional license provisions concerning certain SDM license applicants.

The bill also amended the Code to:

- Create the "Liquor Control Enforcement and License Investigation Revolving Fund", and direct wholesale vendor license fees to that Fund.
- Provide that a retailer is in violation of the Code if the retailer or its employee makes a payment to a wholesaler, the MLCC, or the State that is dishonored for insufficient funds.

The bill took effect on January 4, 2017.

SDM License: Approved Type of Business

The bill deleted a provision that allowed a person to apply for an SDM license without holding or applying for any other license under the Code.

The bill prohibits the MLCC from issuing a new SDM license or transferring an existing SDM license unless the applicant is an approved type of business (except as provided below for a marina). An applicant is not an approved type of business unless it meets one or more of the following conditions:

- The applicant holds and maintains a retail food establishment license under the Food Law.
- The applicant holds and maintains an extended retail food establishment license under the Food Law.
- The applicant holds a specially designated distributor (SDD) license or the MLCC approves the issuance of an SDD license to the applicant.
- The applicant holds or the MLCC approves the issuance to the applicant of one of the following types of 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 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.)

Previously, an applicant for a class C, class A hotel, class B hotel, class G-1, class G-2, tavern or SDD license or a retailer licensed to sell alcoholic liquor could apply for an SDM license. The bill deleted this provision, but allows an SDD to apply for a license as an SDM.

SDM License Quota

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

This quota does not apply to an applicant for an SDM license that is 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 does not apply to an applicant for or the holder of an SDM license whose licensed establishment meets one or both of the following conditions:

- The licensed establishment is at least 20,000 square feet, and its gross receipts from the sale of food are at least 20% of the total gross receipts.
- The licensed establishment is also a pharmacy, as defined in the Public Health Code.

In addition, the quota does not apply any of the following (which are described in more detail below):

- A secondary location permit issued to an SDM under Section 541 of the Code.
- An SDM license issued to a retail dealer that holds a license under the Motor Fuels Quality Act.
- An SDM license issued to a marina under Section 539.

The MLCC may waive the quota if there is no existing SDM within two miles of the applicant, measured along the nearest traffic route.

The Commission is required to waive the quota if both of the following apply:

- The applicant applied for the SDM license within 60 days after the bill's date.
- The applicant is a retail dealer holding a license issued under Section 6(1) of the Motor Fuels Quality Act, and includes a copy of that license 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.)

The bill permits an SDM license to be transferred to an applicant whose proposed operation is located within any local governmental unit in a county in which the SDM license was located. If the local governmental unit spans more than one county, the SDM 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 one in which the license originally was issued, the MLCC must count that transferred SDM license against the local governmental unit originally issuing the license.

The bill specifies that the quota does not bar the right of an existing SDM to renew or transfer the SDM license. This applies to an SDM license issued or renewed before, on, or after the bill's effective date. An SDM license issued may not be transferred to another location, however, if it is or was issued after that date under an exception to the quota for 1) an applicant that is an applicant for or holder of an on-premises license (listed above), or 2) an applicant that meets the square footage/gross receipts criteria. An SDM license also may not be transferred to another location if it was issued under the exception that applies when there is no existing SDM within two miles of the applicant.

For purposes of the quota, population is to 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 is latest.

SDM or SDD License Issued to Marina

Under Section 539 of the Code, if several conditions are met, a marina that is situated on one

of the Great Lakes, on the part of an inland waterway or tributary connected to and navigable to one of the Great Lakes, or on a Great Lakes connecting waterway, may be issued a license as an SDM or SDD, even though the marina maintains motor vehicle fuel pumps on or adjacent to the licensed premises, or maintains a financial interest in any motor vehicle fuel pumps.

The bill requires the marina to be an approved type of business, as described above, in addition to meeting the following criteria:

- 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.
- The fuel pumps are used for dispensing fuel only to those boats.

The bill also specifies that, for a marina that maintains motor vehicle fuel pumps on or adjacent to the licensed premises, or maintains a financial interest in any motor vehicle fuel pumps, the Commission may issue an SDM license to the marina under Section 539.

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.

As previously provided, subject to various exceptions, the MLCC may not allow an applicant for or holder of an SDD 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.

In addition, the Commission may not prohibit an applicant for or the holder of an SDD 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.

Previously, these provisions applied to an applicant for or holder of an SDM license, as well as an applicant for or holder of an SDD license.

The bill also deleted provisions under which 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 both of the following conditions were met:

- The applicant or holder was 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 was the only person that owned or operated fuel pumps on the date of application.
- The applicant or licensee maintained 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.

Under the bill, the MLCC may not prohibit an applicant for or the holder of a specially designated merchant license from owning or operating motor vehicle fuel pumps on or adjacent to the licensed premises if the site of payment and selection of alcoholic liquor is not less than five feet from that point where motor vehicle fuel is dispensed. This provision does not apply to an SDM license issued to a marina under Section 539.

Under Section 541, if an SDM's licensed premises are a primary location, the MLCC may issue a secondary location permit to the SDM for the sale of beer and/or wine at a secondary location. The bill defines "primary location" as licensed premises that meet both of the following conditions:

- The applicant or licensee 1) is located in a neighborhood shopping center, and/or 2) maintains a minimum inventory on the premises, excluding alcoholic liquor and motor vehicle fuel, of at least \$250,000, at cost, 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 where fuel is dispensed.

Previously, "primary location" referred to licensed premises that satisfied the conditions that an applicant for or holder of an SDD license must meet in order to own or operate motor vehicle fuel pumps on or adjacent to the licensed premises.

Conditional License

The Code authorizes the MLCC to issue a conditional liquor license to certain applicants for use during the license application review process. A conditional license allows the sale of alcoholic liquor while an application for a "permanent" license is being reviewed.

The applicants that may request a conditional license include an applicant seeking a new SDM license that will not be held in conjunction with a license for the sale of alcoholic liquor for on-premises consumption. Under the bill, this does not apply to an applicant for which the Commission may waive the SDM license quota if there is no SDM within two miles.

The Code requires the MLCC to issue a conditional license to an approved applicant within 20 business days after receiving a completed application and completed conditional license request form for a conditional license at a single location. The MLCC may take up to 30 business days to issue conditional licenses to approved applicants seeking conditional licenses at multiple locations. Under the bill, the Commission may take up to 45 business days for an applicant that is a retail dealer licensed under the Motor Fuels Quality Act that is seeking an SDM license.

Enforcement & Investigation Fund; Wholesale Vendor Fees

The bill created the Liquor Control Enforcement and License Investigation Revolving Fund within the State Treasury. The MLCC may 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 may not use more than 35% of the money appropriated to the Fund to carry out the licensing provisions of the Code.

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

The bill requires wholesale vendor license and license renewal fees to be deposited into the Liquor Control Enforcement and License Investigation Revolving Fund. Previously, these fees had to be credited to the Grape and Wine Industry Council.

Dishonored Payment

The bill provides that a retailer violates the Code if the retailer or the retailer's clerk, servant, agent, or employee makes a payment to a wholesaler, the Commission, or the State by any means that has been dishonored by a financial institution for lack of sufficient funds.

MCL 436.1533 et al.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill will 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 made changes to the criteria under which licenses are issued, but did not fundamentally change the process through which the MLCC reviews and approves licenses. To the extent that the changes increase or decrease the number of license applications, the MLCC's revenue and expenditures will follow. From the standpoint of local government, the 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 will affect the amount of this revenue as well.

The bill also created the Liquor Control Enforcement and License Investigation Revolving Fund, which will receive revenue from wholesale vendor licenses. The Fund may be used for enforcement of the Liquor Control Code and license investigations; however, only 35% of the money in the Fund may be used for the latter purpose. About \$170,000 in these fees is generated on an annual basis. These fees were formerly credited to the Grape and Wine Industry Council, which used to receive about \$670,000 from all nonretail license fees; that amount will be reduced to about \$500,000 per year going forward.

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.