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SFA BILL ANALYSIS

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House Bill 4454 (Substitute H-1 as passed by the House)
Sponsor: Representative Ilona Varga
House Committee: Regulatory Affairs
Senate Committee: Economic Development, International Trade and Regulatory Affairs

Date Completed: 10-27-97

## CONTENT

**The bill would create the "Michigan Liquor Control Code of 1997" to repeal and recodify the Michigan Liquor Control Act (MCL 436.1-436.58). The proposed Code would, among other things, do the following:**

- **Prescribe specific responsibilities of authorized distribution agents (ADAs).**
- **Specify conditions that would regulate specially designated distributors (SDDs).**
- **Provide that all money in the revolving fund maintained by the Liquor Control Commission (LCC) would have to be available to the LCC for administration of the Code.**
- **Specify penalties for revoked or transferred liquor licenses.**
- **Delete a provision that allows wines manufactured in Michigan to be taxed at a lower rate than other wines.**
- **Specify procedures for votes on the question of the sale and manufacture of alcoholic liquor in a county, city, village, or township.**

The bill would be effective January 1, 1998. The following is a brief description of the bill.

### ADA Responsibilities

Currently, the Act defines "authorized distribution agent" as a person approved by the LCC to do one or more of the following:

- Store spirits owned by a supplier of spirits.
- Deliver spirits sold by the LCC to retail licensees.
- Perform any function needed to store spirits owned by a supplier of spirits or by the LCC or to deliver spirits sold by the LCC to retail licensees.

Among other things, an ADA is currently responsible for the delivery to each retailer located in its assigned distribution area on at least a weekly basis if an order meets the minimum requirements. The minimum requirements are set by the LCC and consist of a sufficient number of bottles to constitute not more than two cases and not less than one case.

Under the bill, an ADA would have to fill a partial order in a timely manner as if a delivery had met the minimum requirements, if the ADA did not have sufficient stock to fill a retailer's order that otherwise would have met the minimum requirements. The bill also would require ADAs to provide retailers access to a computer application that would include the capability to determine whether certain spirits were available for delivery. The bill would add that each ADA would have to enter into a performance contract with the Commission.

SDD Regulations

Under the Act, “specially designated distributor” means a person engaged in an established business licensed by the LCC to distribute spirits and mixed spirit drink in the original package for the LCC for consumption off the premises.

The bill specifies that in cities, incorporated villages, or townships, the LCC could issue only one SDD license for each 3,000 of population or fraction of 3,000. The bill also would delete a current requirement that a SDD be a resident of this State or authorized to do business under the laws of this State to sell spirits for consumption off the premises.

Revolving Fund

Currently, the LCC is authorized to maintain a revolving fund, which is derived from the money deposited to the credit of the LCC with the State Treasurer. The fund is used for replenishing, maintaining, warehousing, and transporting the liquor stock into the various State liquor stores throughout Michigan. Under the bill, money received by the LCC would have to be turned over monthly to the State Treasurer. The bill specifies that all money deposited by the LCC with the State Treasurer, including interest earnings on common cash attributable to the revolving fund, would be credited to the fund and would be available to the LCC.

Penalties

Currently, a person with a revoked liquor license forfeits any and all privileges given by the license and the LCC must seize all alcoholic liquor found in the possession of the licensee. The bill would add that a person whose license was revoked for cause or whose license was ordered transferred to another person for cause would not be eligible for issuance or reissuance of a license for at least two years.

Wine Tax

Under the Act, wines manufactured in Michigan from Michigan-grown grapes and fruits are entitled to tax reductions. Currently, wines sold in Michigan are taxed at the rate of 13.5 cents per liter for wines containing 16% or less alcohol and 20 cents per liter for wines containing more than 16% alcohol. Wines manufactured in Michigan from Michigan-grown grapes and fruits receive tax reductions of 12.5 cents per liter for wines containing 16% or less alcohol and 19 cents for wines containing more than 16% alcohol. The bill would delete the tax reduction given to wines manufactured in Michigan from Michigan fruits and would tax all wines sold in Michigan at the same 13-cent or 20-cent rate.

Voting Procedure

Under the bill, all votes submitted by ballot on the question of the sale of spirits and mixed spirit drink for consumption on the premises by restaurants, hotels, and establishments within a city, village, or township would have to be taken, counted, and canvassed in the same manner as votes cast in a city, village, or township election. The bill specifies that the votes on the question of the manufacture or sale of alcoholic liquor within a county would be by ballots, furnished by the board of election commissioners of the county.

Other Provisions

The bill would delete a current provision under which any retailer or applicant for a retail license may be required to file with the LCC a liability insurance policy in lieu of a surety bond.

Currently, a new application for a license to alcoholic beverages at retail, or a request to transfer location of an existing license must be denied if the contemplated location is within 500 feet of a church or school building. However, the bill states that this provision should not be construed to prevent the transfer of a license to a location farther from a church or school when the license to be transferred was within the 500-foot radius.

Under the Act, alcohol liquor for consumption on the premises must be sold in accordance with a printed price list posted conspicuously in a prominent place on the licensed premises. The bill instead would require that the printed price be readily available.

The bill would delete a current provision that prohibits the LCC from issuing licenses to manufacturers other than manufacturers of wine, mixed spirit drink, beer, malt beverages, or distillers and rectifiers unless at least 25% of the capital stock is owned by residents of the State.

The LCC would have to adopt rules and regulations promulgated under the Administrative Procedures Act.

<u>Savings Clause and Repealer</u>

The bill states that the Code would not impair or affect any act done, offense committed or right accruing, accrued, or acquired, or penalty, forfeiture or punishment incurred prior to the time the bill took effect, but the same could be enjoyed, asserted, enforced, or prosecuted or inflicted, as fully and to the same extent as if the bill had not been passed.

In addition to repealing and recodifying the Michigan Liquor Control Act, the bill would repeal (and recodify in the Code) the following:

-- Public Act 94 of 1959 (which imposes a 4% specific tax on the retail price of spirits and requires the proceeds to be appropriated to the State School Aid Fund).
-- Public Act 218 of 1962 (which imposes a 4% specific tax on the retail price of spirits and dedicates the proceeds to the General Fund).
-- Public Act 213 of 1972 (which imposes a 1.85% specific tax on the retail price of spirits for off-premises consumption, and requires the proceeds to be credited to the Liquor Purchase Revolving Fund within the State Treasury).
-- The Tourism and Convention Facility Promotion Tax Act (which imposes a 4% specific tax on the retail price of spirits for consumption both on and off the premises, and requires the proceeds to be credited to the Convention Facility Development Fund within the State Treasury).

Legislative Analyst: N. Nagata

**<u>FISCAL IMPACT</u>**

This recodification includes two changes that are noteworthy but would not have any fiscal implications for the State or local governments. This first would require the Commission to enter into a performance contract with the ADAs. This could mean additional administrative responsibilities for the Commission but existing resources would be used to cover the cost of this requirement. Second, the bill would change the accounting of Commission deposits and interest earnings on the common cash fund, by crediting them to the Liquor Revolving Fund. These funds would be used for the administration of the Commission and would have no fiscal impact on the State as the balance in the fund would still be credited to the General Fund at year end.

Fiscal Analyst: M. Tyszkiewicz