Legislative Analysis

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BUDGET AGREEMENT:
LIQUOR CONTROL AMENDMENTS

House Bills 6426 and 6427
Sponsor: Rep. Bert Johnson
Committee: Regulatory Reform

Complete to 9-15-10

A SUMMARY OF HOUSE BILLS 6426 AND 6427 AS INTRODUCED 9-8-10

House Bills 6426 and 6427 would partially implement several changes to the state's liquor laws included as part of the Fiscal Year 2011 budget agreement.[1]

House Bill 6426
The bill would amend the Liquor Control Code to increase penalties for bootlegging spirits, and to allow sampling, instant rebates, and value-added packaging.

Bootlegging — The bill would prohibit a person, even if not licensed by the LCC, from selling, delivering, or importing spirits unless that sale, delivery, or importation is made by the commission, the commission's authorized agent or distributor, an authorized distribution agent, a person licensed by the commission, or by prior written order of the LCC. The penalty for violating this provision would depend on the volume of spirits illegally sold, delivered, or imported, as follows:

- At least 80,000 ml: A felony, punishable by up to four years imprisonment and/or a fine of up to $5,000.
- 8,000 - 79,999 ml: A misdemeanor, punishable by 93 days imprisonment and/or a fine of up to $2,500.
- Less than 8,000 ml: A state civil infraction, punishable by a civil fine of up to $1,000.

Additionally, a retail licensee who sells, offers to sell, accepts, furnishes, possesses, or allows the consumption of bootlegged spirits would be subject to an administrative fine of not more than $2,500 per occurrence as well as additional license sanctions, as follows:

- 1st violation: License suspension of 1-30 days.
- 2nd violation: License suspension of 31-89 days.

[1] In addition to the changes included in HB 6426 as introduced, the target agreement also included revenue from the creation of a new wine auction license.

- 3rd violation: License suspension of 90 days.

- 4th+ violation: License revocation

Sampling: The bill would allow consumer sampling of spirits to occur on the premise of specially designated distributors (SDD, off-premise retailers), conducted by suppliers of spirits (or their authorized representatives), subject to the following requirements.

- The LCC would have to be notified in writing at least five days before the event.
- Each sampling event would be limited to three per SDD per calendar month.
- The supplier (or authorized representative) must have a licensed representative present at the SDD.
- The value of the product sampled does not exceed $100.
- Sampled products are only provided to consumers at least 21 years of age.
- The SDD does not receive any fee or other consideration of value in return for hosting the sampling event.
- Each consumer is limited to three samples of no more than 1/3 oz. per sample.
- Samples are free.
- The product used to provide samples is purchased from the SDD hosting the event at the regular retail price.
- The sample event occurs during times when not otherwise prohibited.
- Sampling events may be advertised.
- Servers must demonstrate sufficient training.

If a supplier or authorized representative violates the sampling provisions, a first violation would punishable by a denial of a sampling event application for up to 14 days, with a second or subsequent violation punishable by denial of a sampling license of at least 14 days.

Value-Added Packaging: The bill would also require the LCC to allow manufacturers, or out-state sellers of spirits to package nonalcoholic carbonated beverages with spirits, as part of a marketing and sales promotion program. Generally, as the wholesaler of spirits in the state, the Liquor Control Commission would be required to receive returnable containers under the state's Deposit Law. The bill would require the LCC to work with the Department of Treasury to avoid that situation, but still allow returnable containers to be redeemed elsewhere.

Instant Rebates: The bill would require the LCC to develop administrative rules allowing non-mail-in rebates or instant coupons on spirit sales, provide the discounts do not impact the profit margins provided to the LCC under the Code.

House Bill 6427

The bill would amend Chapter XXVA (Criminal Enterprises) of the Michigan Penal Code to add the following to the definition of the term *racketeering*: committing, attempting to commit, conspiring to commit, or aiding or abetting, soliciting, coercing, or intimidating a person to commit an offense for financial gain involving a felony violation (at least 80,000 ml) related to the illegal sale, delivery, importation of spirits.

FISCAL IMPACT:

The bills are part of the FY 2011 budget target agreement, which relies on $9.1 million in additional revenue to the General Fund, as follows:

- Bootlegging Enforcement: $4.0 million
- Value-Added Packaging: $2.1 million
- Instant Rebates: $1.7 million
- Sampling: $0.8 million
- Wine Auctions: $0.5 million

Industry experts suggest that these changes are expected to result in an increase in spirits sales occurring in the state. The state, through its imposition of various taxes on the sales of spirits, would then see an increase in tax revenue. Under the Liquor Control Code, the state imposes a series of specific taxes, totaling 13.85%, on spirits sold in the state, as follows:

- 1.85% specific tax credited to the Liquor Purchase Revolving Fund, only imposed on sales to off-premise licensees.
- 4.0% specific tax credited to the Convention Facilities Development Fund.
- 4.0% specific tax credited to the School Aid Fund.
- 4.0% specific tax credited to the General Fund.

The budget target agreement figures above only reflect the GF/GP revenues that are expected to increase through the enactment of HB 6426. This GF/GP revenue figure not only includes revenue directly credited to the General Fund (i.e., the 4% specific tax), but additional revenue credited to the Liquor Purchase Revolving Fund. The LPRF is used by the LCC to support its liquor merchandising operations, as well as administrative expenses of the Department of Energy, Labor, and Economic Growth and the Liquor Control Commission.[2] By statute, any excess revenue in the LRPF lapses to the General Fund.[3] In addition to the increase in GF/GP revenue, it is anticipated that the changes would also result in an increase in School Aid Fund revenue of $0.9 million and another increase of $0.9 million credited to the Convention Facilities Development Fund.

The increased revenue resulting from enhanced bootlegging penalties and enforcement are expected to stem from the imposition of additional administrative fines, which are credited to the General Fund. Additionally, HB 6426 provides for the forfeiture of proceeds under the Criminal Enterprises Chapter of the Michigan Penal Code. Early estimates are that the increased bootlegging enforcement activities would be supported by

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[2] In addition to administrative costs, $2.5 million from the LPRF is also used within the DELEG budget to support the Fire Protection Grant program.

[3] According to the LCC's 2009 financial statement, the General Fund transfer was $161.0 million in FY 2009, up slightly from $159.2 million in FY 2008.

an additional 6.0 FTE employees for the Liquor Control Commission. These employees would be supported by an additional $0.5 million (LPRF), with the LCC requiring an additional $0.5 million (LPRF) for necessary scanning equipment.[4]

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[4] For background information on bootlegging in the state, see, *Illegal Importation of Alcohol into Michigan: An assessment of the issue and recommendations*, Michigan Liquor Control Commission, January 15, 2008, [http://www.michigan.gov/documents/dleg/Illegal_Importation_of_Alcohol_1_14_08_221682_7.pdf].