

Legislative Analysis



CONDITIONAL LIQUOR LICENSE

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House Bill 5488 (Substitute H-1)

Sponsor: Rep. Ray A. Franz

Committee: Regulatory Reform

Revised First Analysis (7-12-12)

BRIEF SUMMARY: The bill would allow the issuance of a conditional liquor license to certain applicants for use during the license application review process.

FISCAL IMPACT: House Bill 5488 would have an indeterminate, yet likely insubstantial, fiscal impact on the Liquor Control Commission (LCC). The bill does not establish any new fees but does require the LCC to create an application form and standards for completion in order to issue a new Temporary License which would engender minor increased costs for the LCC. Further, additional indeterminate costs could result from the amendment if the LCC finds it necessary to promulgate new rules to effectively administer the provisions under the amendment.

THE APPARENT PROBLEM:

Section 525(3) of the Liquor Control Code requires the LCC to make a determination on an initial or renewal license no later than 90 days after the applicant files a completed application. If an application is deemed incomplete, the LCC must notify the applicant within 30 days after receiving the application, and describe the deficiency. The 90-day period to make a determination on a license application can be tolled, or stopped, for the following periods and under the following circumstances:

- If notice is sent by the LCC of a deficiency in the application, the process can be tolled until the date in which all of the requested information is received.
- For the time period required to complete certain actions required of the applicant, including: construction or completion of a licensed premises; mandatory inspections by the LCC or by any state, local, or federal agency; approval by the legislative body of a local unit of government; and criminal history and financial records checks.

If the LCC fails to make a determination on a license within the time requirements contained in Section 525(3), the license fee must be returned to the applicant and the license fee for the applicant's next renewal application would be reduced by 15%.

There is concern in the retail industry about the time it can take to obtain a license. While statute requires the LCC to issue a license within 90 days, their ability to toll, or stop, the clock can cause the process to take much longer. Testimony highlighted cases where it took several years to get a license issued. The bill is intended to address these

long delays and provide business owners with the ability to operate on a conditional license while waiting for final approval.

Additionally, the Office of Regulatory Reinvention's recommendations concerning liquor regulations recommended the creation of a conditionally approved license similar to the one proposed in this bill. For the complete ORR recommendation, see:

http://www.michigan.gov/documents/lara/ORR_LCC_ARC_Recommendations_391015_7.pdf

THE CONTENT OF THE BILL:

The bill would amend Section 525 of the Liquor Control Code to require the LCC to provide for a conditional license to an applicant for use during the application review process.

Specifically, the LCC would be required to issue a conditional license to an applicant seeking to (1) transfer an existing license to sell alcoholic liquor for consumption on or off the premises at the same location; or (2) obtain an initial license, except for a specially designated distributor license or for the sale of alcoholic liquor for consumption on the premises, as long as the applicant has submitted a completed application and acceptable proof of financial responsibility. The license would have to be issued within 14 days of the request.

The conditional license would expire when the LCC issues a final order either approving or denying the application or 1-year after the date it was issued, whichever happens first.

If a conditionally approved licensee fails to maintain acceptable proof of its financial responsibility, the LCC would be required to suspend the license until acceptable proof is filed, provided that due notice was given and a proper hearing took place.

MCL 436.1525

ARGUMENTS:

For:

There are numerous stories of applicants having to wait several months, even years, to receive final approval for a liquor license. This time delay provides uncertainty for the business operator and may discourage or prevent someone from opening a business. Allowing applicants to operate on a conditional license once he or she has completed an application and provided proof of financial responsibility will allow individuals to establish businesses more quickly.

Response:

It should be noted the Office of Regulatory Reform's recent recommendation, while similar in concept, is different from that proposed in House Bill 5488. The ORR recommends establishing a conditionally approved license in Section 501 to "expand on the term conditionally approved license" that is only used in that section and limiting the time frame to 180 days. The 180-day time frame would coincide with the time frame for completing the server training requirements and could serve as a reminder to complete

the training, thus resulting in fewer hearings for applicants that have not met the server training requirement.

The ORR recommendation also contains a series of events that would result in the immediate suspension of a conditional license, including when a licensee commits a violation that would result in the suspension or revocation of a permanent license. House Bill 5488 does not contain a similar provision. However, assuming a conditional license would be treated the same as a permanent license for enforcement purposes, the LCC may be able to take the same enforcement action against a conditional license as it would a permanent license and use the authority it already has to suspend or revoke a conditional license.

Against:

There was no opposition at the committee level.

POSITIONS:

Associated Food and Petroleum Dealers supports the bill. (6-6-12)

Associated Petroleum Industries of Michigan supports the bill. (3-28-12)

Michigan Bankers Association supports the bill. (6-6-12)

Michigan Beer and Wine Wholesalers Association supports the bill. (6-6-12)

Michigan Business and Professional Association supports the bill. (3-28-12)

Michigan Grocers Association supports the bill. (3-28-12)

Michigan Licensed Beverage Association supports the bill. (6-6-12)

Michigan Restaurant Association supports the bill. (6-6-12)

Michigan Liquor Control Commission is neutral on the bill. (6-6-12)

Michigan Municipal League is neutral on the bill. (3-28-12)

Michigan Townships Association is neutral on the bill. (3-28-12)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.