

ISSUANCE OF CONDITIONAL LIQUOR LICENSE

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House Bill 4277 (as enacted)

Public Act 263 of 2013

Sponsor: Rep. Ray A. Franz

House Committee: Regulatory Reform

Senate Committee: Regulatory Reform

Second Analysis (4-10-14)

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

FISCAL IMPACT: House Bill 4277 would have a likely neutral fiscal impact on the Liquor Control Commission (LCC). The bill would establish a new \$300 fee for conditional licenses, which would support the LCC's creation of an application form, standards for completion, and procedures to approve or deny the issuance of the new Conditional Licenses. Additional indeterminate costs could result if the LCC finds it necessary to promulgate new rules to effectively administer the provisions under the bill.

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 months, and in some cases 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 allows the issuance of a conditional liquor license to certain applicants for use during the license application review process. Such a license would require a \$300 fee. The bill would amend Section 525 of the Liquor Control Code (MCL 436.1525), and would take effect on May 22, 2014.

Under the bill, the Liquor Control Commission would have to approve or deny a conditional license to either of the following:

- (1) An applicant seeking to transfer ownership of or interest in an existing license at the same location to sell alcohol for consumption on or off the premises.
- (2) An applicant seeking an initial license, except for a specially designated distributor license or SDD (a license for selling spirits for off-premises consumption) or a license for the sale of alcoholic liquor for consumption on the premises.

An applicant would have to seek a conditional license on a form separate from the original application for a license and would have to submit an acceptable proof of financial security form and an executed property document. In making its determination, the LCC must consider the arrest and conviction records or previous violation history in the management, operation, or ownership of a licensed business.

Under the bill, the LCC is required to issue a conditional license within 20 business days after receipt of a completed application, a completed conditional license request form, and documentation for a conditional license, if it is for a license at a single location. For multiple locations, the LCC would have 30 days to issue a conditional license.

A conditional license is nontransferable and nonrenewable. It expires at the earliest of the following: (1) when the commission issues an order of denial of the license application that served as the basis for the conditional license; (2) 20 business days after the LCC issues an order of approval of the license application; (3) when the licensee or conditional licensee notifies the commission that the initial application should be canceled; or (4) one year after the conditional license was issued.

If a conditionally approved licensee fails to maintain acceptable proof of financial responsibility, the LCC would be required to suspend the license until acceptable proof

was filed, provided that due notice was given and a proper hearing took place.

If a conditional license is revoked, the conditional licensee could not recover from a unit of local government any compensation for property, future income, or future economic loss due to the revocation.

Upon issuing a conditional license, the LCC would place an existing license in escrow. If the conditional license expires because a license transfer is denied or did not occur within the one-year period, the existing licensee could (1) request the commission to release the license from escrow or (2) keep the license in escrow.

The bill was tie-barred to Senate Bill 504, 505, 506, 507, and 650, and House Bill 4709, 4710, and 4711. These were all amendments to the Liquor Control Code; however, their subject matter is not directly related to House Bill 4277. All of those other bills have now been enacted.

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 they have completed an application and provided proof of financial responsibility will allow individuals to establish businesses more quickly.

In the instance where a business is sold and the new owner is operating on the previous owner's license under a management agreement, the bill will allow the new owner to operate on a conditional license while waiting for the permanent license to be transferred. According to testimony, by putting the permanent license in escrow and allowing the new owner to operate on a conditional license, the previous owner of the business will no longer have liability for the actions of the new owner. Such a change may provide greater flexibility in the transition between owners of an establishment.

Response:

It should be noted that the Office of Regulatory Reform's recommendation on conditional licensure, while similar in concept, is different from that proposed in House Bill 4277. The ORR recommends establishing a conditionally approved license in Section 501 to "expand on the term 'conditionally approved license'" only as 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 describes 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 4277 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 against a permanent license and use the authority it already has to suspend or revoke a conditional license.

Against:

While not opposed to the bill, some people expressed concern that local units of government would not be involved in the issuance of a conditional license. Under current law, local units of government must approve a resolution before the LCC can issue a permanent license. It was suggested the bill include language allowing local units of government a role in the process. According to testimony, under the bill as currently written, a business could be operating without knowledge or approval of the local unit of government.

Response:

On the other hand, others have suggested the requirement for local approval of a license application is one of the factors that can slow down the application process, and if required as part of the conditional license application, could undermine the intent of the bill.

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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.