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BILL ANALYSIS



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Senate Bill 981 (as enacted)
Sponsor: Senator Wayne Schmidt
Senate Committee: Regulatory Reform
House Committee: Regulatory Reform

PUBLIC ACT 315 of 2016

Date Completed: 2-28-17

CONTENT

The bill amended the Michigan Liquor Control Code to do the following:

- **Allow an applicant to request a conditional license if the applicant is seeking to transfer the ownership and location of an existing retailer license, other than a specially designated distributor license, to sell alcoholic liquor for consumption on or off the premises.**
- **Allow an applicant to request a conditional license if the applicant is seeking a new specially designated merchant license that will not be held in conjunction with a license for the sale of alcoholic liquor for on-premises consumption.**
- **Specify that a conditional license does not include existing permits and approvals for which the conditional applicant does not meet the requirements under the Code or rules, or those that the conditional applicant has requested to cancel.**
- **Require a conditional license applicant to submit an affidavit that the proposed licensed location meets requirements regarding the minimum distance between a church or school building and a licensed location, under certain circumstances.**
- **Require the Liquor Control Commission to suspend a conditional license if it determines that the license has been issued at a proposed location that does not meet the minimum distance between a church or school building and the location.**
- **Prohibit the Commission from issuing a new permit with a conditional license.**
- **Require a conditional licensee to comply with server training requirements under the Code beginning on the date a conditional license is issued.**
- **Revise provisions regarding the expiration of a conditional license.**

The bill took effect on February 1, 2017.

Eligible Applicants

The Code authorizes the Michigan Liquor Control Commission 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.

Previously, the Code allowed the following applicants to request a conditional license:

- **An applicant seeking to transfer ownership of or interest in an existing license at the same location to sell alcoholic liquor for consumption on or off the premises.**

- An applicant seeking an initial license other than a specially designated distributor (SDD) license or a license for the sale of alcoholic liquor for consumption on the premises.

The bill, instead, allows the following to request a conditional license:

- An applicant seeking to transfer ownership of an existing retailer license at the same location to sell alcoholic liquor for consumption on or off the premises.
- An applicant seeking to transfer the ownership and location of an existing retailer license, other than an SDD license, to sell alcoholic liquor for consumption on or off the premises.
- An applicant seeking a new specially designated merchant license not to be held in conjunction with a license for the sale of alcoholic liquor for consumption on the premises.

(A specially designated distributor is a business licensed by the Commission to sell spirits and mixed spirit drink in the original package for consumption off the licensed premises. A specially designated merchant is a person licensed to sell beer or wine, or both, at retail for off-premises consumption.)

Church or School Proximity

Under the Code, if an applicant submits a separate form requesting a conditional license with an acceptable proof of financial responsibility form and an executed property document, in addition to a completed application for a liquor license, the Commission must approve or deny the conditional license, after considering the arrest and conviction records or previous violation history in the management, operation, or ownership of a licensed business.

The bill requires a conditional license applicant, for an application to transfer the location of an existing retailer license other than an SDD license, also to submit a church or school proximity affidavit on a form prescribed by the Commission attesting that the proposed location is not within 500 feet of a church or school building using the method of measurement required under Section 503 of the Code.

(Section 503 states that a new application for a license to sell alcoholic beverages at retail, or a request to transfer the location of an existing license, must be denied if the contemplated location is within 500 feet of a church or a school building. The section provides exceptions to this requirement, and does not apply to specially designated merchants not in conjunction with on-premises licenses. The Commission may waive the section in the case of other classes of licenses.)

Also, under the bill, notwithstanding the applicant's submission of a church or school proximity affidavit, if the Commission determines that a conditional license in conjunction with an application to transfer the location of an existing retailer license has been issued at a proposed location that is within 500 feet of a church or school building, the Commission must suspend the conditional license and notify the church or school of the proposed location. If the Commission issues a conditional license based on an affidavit without knowledge that the representations included in the affidavit are incorrect, the State is not liable to any person for the Commission's issuance of the conditional license. The Commission may assume without inquiry the existence of the facts contained in the affidavit.

Permits

The bill requires a conditional license issued for the transfer of an existing license to include only existing permits and approvals held in connection with the license, other than permits or approvals for which the conditional applicant does not meet the requirements in the Code or rules promulgated under the Code, or permits or approvals that the conditional applicant has requested to cancel as part of the application that serves as the basis for the conditional license. The Commission may not issue a new permit with a conditional license. Previously,

the Code stated that a conditional license issued for the transfer of an existing license at the same location included any existing permits and approvals held in connection with the license.

Server Training Requirements

The bill requires a licensee to comply with the server training requirements in Section 501(1) of the Code beginning on the date a conditional license is issued, regardless of whether the licensee is actively operating under the conditional license.

(Under Section 501(1), the Commission may not issue a new on premises license or transfer more than 50% interest in an existing on-premises license unless the applicant or transferee offers acceptable proof that he or she has employed or has present on the licensed premises, at a minimum, supervisory personnel on each shift and during all hours in which alcoholic liquor is served who have successfully completed a server training program described under the Code. The Commission may suspend the license of a conditionally approved licensee if that licensee does not comply with the requirements, and may waive the requirements under certain circumstances.)

Conditional License Expiration

A conditional license is not transferable or renewable. Under the bill, a conditional license expires when whichever of the following occurs first:

- The Commission issues an order of denial of the license application that serves as the basis for the conditional license after all administrative remedies before the Commission have been exhausted.
- The Commission issues the license for which the applicant submitted the application that serves as the basis for the conditional license.
- The licensee or conditional licensee notifies the Commission in writing that the initial application should be cancelled.
- One year passes after the date the conditional license was issued, notwithstanding any suspension of that license.

These conditions are generally the same as the Code previously provided. Formerly, however, a conditional license expired 20 days after the Commission issued an order of approval of the license application that served as the basis for the conditional license, rather than when the Commission issued the license. Also, in the last item, the bill added the reference to a suspension.

Additional Provisions

Under the bill, if a conditional license is revoked, the conditional licensee may not recover from the State or local unit of government any compensation for property, future income, or future economic loss because of the revocation. The Code previously contained this provision but it did not refer to the State.

Under the bill, if a conditional license expires under any of the circumstances listed above, an existing licensee may request the Commission to release the license from escrow or may keep the license in escrow. Previously, this applied if a conditional license expired because a transfer of an existing license was denied or because the license was not transferred within one year.

MCL 436.1525

Legislative Analyst: Drew Krogulecki

FISCAL IMPACT

The bill will have an indeterminate fiscal impact on the Michigan Liquor Control Commission (MLCC) within the Department Licensing and Regulatory Affairs, and a small, but likely positive fiscal impact on local units of government. The bill revises the list of applicants who may request a conditional license while their licenses are being processed. The MLCC charges a \$300 conditional license fee as well as a \$70 inspection fee per license covered by the conditional license. Expanding the number of license types eligible for a conditional license will generate some amount of additional revenue, depending on the number of businesses that apply. Any additional revenue will be subject to the statutory formula that dictates that the MLCC receive 41.5% of liquor license revenue, county sheriffs receive 55.0%, and 3.5% be dedicated to alcohol abuse and treatment programs. Additional revenue will be offset to some extent by the additional costs related to verification of required application information and issuance of licenses.

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.