



**Senate Fiscal Agency**  
**P. O. Box 30036**  
**Lansing, Michigan 48909-7536**

BILL



ANALYSIS

**Telephone: (517) 373-5383**  
**Fax: (517) 373-1986**

Senate Bill 981 (Substitute S-1 as passed by the Senate)  
Sponsor: Senator Wayne Schmidt  
Committee: Regulatory Reform

Date Completed: 10-4-16

### **RATIONALE**

Public Act 263 of 2013 amended the Michigan Liquor Control Code to allow 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. Before the amendment was enacted, there was concern in the retail industry over the possibility of a prolonged application process, as the Commission may halt the process for certain reasons outlined under the Code. Conditional licenses were created to alleviate this concern.

Conditional licenses may be issued, however, only to applicants for an initial license for on-premises consumption and applicants seeking to transfer ownership of an existing license for the same location. This means that businesses seeking to transfer licenses to new locations cannot obtain a conditional license. Apparently, this causes impediments for those looking to open a new business or location in the State. Thus, it has been suggested that conditional licenses should be available in these situations.

### **CONTENT**

**The bill would amend the Michigan Liquor Control Code to do the following:**

- **Delete a requirement that a license be at the same location, when a conditional license is requested by an applicant seeking to transfer ownership of or interest in an existing license.**
- **Allow an applicant seeking a public on-premises license to apply for a conditional license.**
- **Allow an applicant seeking a resort or resort economic development license to apply for a conditional license.**
- **Require a conditional license applicant to submit an affidavit that the proposed licensed location met the requirements regarding the minimum allowed distance between a church or school building and a licensed location, and allow the Michigan Liquor Control Commission to deny the conditional license if it determined that an affidavit submitted with an application was false or fraudulent.**

The bill would take effect 90 days after its enactment.

#### Eligible Applicants

The Code allows 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 license or a license for the sale of alcoholic liquor for consumption on the premises.

The bill would delete the requirement that the license be at the same location, in the case of an applicant seeking to transfer ownership of or interest in an existing license.

In addition, the bill would allow the following applicants to request a conditional license:

- An applicant seeking a public on-premises license under Section 521a.
- An applicant seeking a resort or resort economic development license under Section 531(2), (3), or (4).

(The Code prohibits the Commission from granting more than one public license for on-premises consumption for each 1,500 of population, but makes a number of exceptions to this quota. Section 521a allows the Commission to issue public on-premises licenses in addition to the quota licenses, for licensees located in a redevelopment project area or in a development district or area that is a tax increment finance authority district, a development area established under the Corridor Improvement Authority Act, a downtown district established under the downtown development authority Act, or a principal shopping district. An applicant for this type of license must meet further criteria and requirements regarding the amount of money invested within the area and the amount spent to rehabilitate or restore the licensed building.

Under Section 531(2), (3), and (4), the Commission may issue a limited number of resort licenses and resort economic development licenses without regard to the quota under specific circumstances.)

#### Affidavit Requirement

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. A conditional license issued for the transfer of an existing license at the same location must include any existing permits and approvals held in connection with the license.

The bill would require a conditional license applicant also to submit an affidavit signed by the applicant that the proposed licensed location met the requirements of Section 503 of the Code; and would require a conditional license issued for the transfer of an existing license (at any location) to include any existing permits and approvals held in connection with the license.

(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. (Specially designated merchants are licensed to sell beer and/or wine at retail for off-premises consumption.) The Commission may waive the section in the case of other classes of licenses. If the church or school does not file an objection, the Commission may issue the license without a hearing.)

Additionally, the bill would require the Commission to deny the conditional license if it determined that an affidavit submitted with an application was false or fraudulent.

MCL 436.1525

#### **BACKGROUND**

A conditional license allows a liquor license applicant to sell alcoholic liquor during the licensing process. Generally, conditional licenses are granted to existing locations (if an existing business will be sold to a new owner, for example). The conditional license permits the business to sell alcoholic liquor without having to wait until a formal license is granted. As a rule, a conditional

license must be issued within 20 business days after the Commission receives a completed application and documentation. A conditional license is not transferable or renewable, and 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.
- Twenty business days after the Commission issues an order of approval of the license 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 after the date the conditional license was issued.

## **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

### **Supporting Argument**

Timeliness is critical to a business's success, and delays associated with the application for a liquor license can be a detriment to the opening of an establishment. The bill would mitigate this potential problem by allowing an applicant to obtain a conditional license and sell alcoholic beverages when an existing liquor license was being transferred to a different location. The bill also would allow applicants for a resort or economic development license, or an on-premises license in a redevelopment project area, to apply for a conditional license. A conditional license could expedite the opening of these types of establishments and promote economic development across the State.

### **Opposing Argument**

The bill could create new, or exacerbate existing, concerns related to a conditional license. For example, the bill would conflict with Section 503 of the Code, which requires the Commission to affirm that a location specified in an application is not within 500 feet of a church or school, as the bill would allow an applicant to submit an affidavit to waive the requirement in Section 503 without amending the section. Furthermore, determining if the business met the distance requirement could take longer than the 20-day period during which the Commission must process a conditional license after receiving the application. Additionally, there is concern regarding the issuance of a conditional license to people who apply for a resort license. Specifically, the Commission may issue only a limited number of resort licenses in a year, and the bill could cause confusion if someone applied for a resort license and the conditional license expired before the resort license was approved.

An additional concern involves the expiration of a conditional license 20 business days after the Commission approves the liquor license that was being processed. In some cases, the applicant is not ready to activate that license when the conditional license expires. While this situation can occur under existing law, the bill would exacerbate the problem by allowing the Commission to issue conditional licenses under expanded circumstances.

Legislative Analyst: Drew Krogulecki

## **FISCAL IMPACT**

The bill would 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. Under the bill, those applying for an on-premises license, resort license, or economic development license would be able to apply for a conditional license while their licenses were 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 would generate some amount of additional revenue, depending on the number of businesses that applied. Any additional revenue would 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 would 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.