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LIQUOR LICENSES: PRORATE QUARTERLY

House Bill 4507 as reported from committee w/o amendment
Sponsor: Rep. Scott Dianda
Committee: Regulatory Reform
Complete to 5-9-18

BRIEF SUMMARY: House Bill 4507 would amend the Liquor Control Code to require, for liquor licenses that will be effective for less than 9 months, that the fee for an initial or transfer license be prorated on a quarterly basis for the portion of the licensing period in which the license is approved and that the fee not be paid until after approval and upon issuance of the liquor license.

FISCAL IMPACT: The bill would significantly decrease revenue to the state and to some local units of government due to the change in how liquor license fees would be charged and collected. (See ***Fiscal Information***, below, for more details.)

THE APPARENT PROBLEM:

Whether for a bar, restaurant, brewery, or liquor store, all categories of Michigan liquor licenses are valid for a one-year period that runs from May 1 to April 30 of the following year. The license fee, which covers the entire April-to-May license, must be paid at the time the application is submitted, whether for an initial license, renewal license, or license transfer. A person who submits an application part or most of the way through the year-long license cycle for an initial license or to transfer a liquor license (say, to a new owner at the same location or to the same owner but at a new location) must pay the full fee regardless of when in the cycle the application is submitted or approved. Thus, even though an initial or transfer license may be approved and ready to be picked up just weeks shy of the end of the year-long cycle, a renewal application along with another full fee must be submitted a few weeks later.

The state regulatory agency that issues liquor licenses maintains that the current fee structure is needed because the process and the costs to investigate and approve or deny an application are the same whether for an initial or transfer license that will be good for less than a year or for a renewal license that will be valid for the entire license cycle. Some, however, believe that this is an unfair practice that deprives new business owners, or those relocating a business to a new location, of money that could be used to get the business off the ground, and that the initial license fee or transfer fee should be prorated if the license is issued close to the yearly April 30 expiration date. It has been suggested that the state liquor law be amended to allow a license that would be valid for less than 9 months to be prorated on a quarterly basis.

THE CONTENT OF THE BILL:

The Michigan Liquor Control Commission (LCC) issues numerous types of liquor licenses for those who manufacture, deliver, or sell beer, wine, or spirits. Licenses in each class are valid for one year, from May 1 to April 30 of the following year, meaning that every liquor license must be renewed by April 30 of each year.

Currently, the Michigan Liquor Control Code requires an applicant for a new or renewal license, or an applicant who wishes to transfer a license to a new location or to a new owner, to submit the applicable license fee at the time of application for the license (whether original, renewal, or transfer). If approved, the LCC issues an order to the applicant that the license is approved along with instructions for completing the approval process, if needed. For example, a final inspection may be needed before the license can be issued. According to the LCC, once the approval is finalized, a licensee can pick up the license (or have it mailed) or delay the license's effective date. For instance, some applicants for a new or transfer license may choose to have the license be effective in early May if the final approval is close to the April 30 renewal deadline.

If the license or transfer request is denied, the fee is not refunded. In addition, the Code specifically prohibits the fee for the various types of licenses to be prorated for the effective period of the license. Thus, an applicant who submits a full license fee and receives the license close to the April 30 renewal deadline must still renew the license by April 30 of that year.

<u>House Bill 4507</u> would amend the Michigan Liquor Control Code to instead require—based on the approval date of the application—that the fees for the various types of licenses be prorated on a quarterly basis for a portion of the effective period of the license. If the application is for a license that will be effective for less than 9 months, the applicant or licensee would be required to pay a prorated license fee and to submit the prorated fee <u>*after*</u> the application is approved and <u>*upon issuance*</u> of the license. A transfer license fee would have to be paid <u>*upon issuance*</u> of the license. The bill would also make several revisions of a technical nature for clarity.

MCL 436.1525 and 436.1529

FISCAL INFORMATION:

House Bill 4507 would likely cause a significant decrease in revenues—of indeterminate magnitude—for fees that are collected for numerous licenses issued by the Michigan Liquor Control Commission (LCC) and for the transfer of licenses. The bill would not have a significant fiscal impact on other units of state government, but would likely decrease revenues for municipalities and counties, which receive 55% of retailers' license fees and renewal fees for use by their law enforcement agencies for enforcement of the Liquor Control Code.

The bill would decrease revenues by requiring that licenses be prorated on a quarterly basis if an application is submitted that will be effective for less than 9 months. The bill would also cause a decrease in revenues from the fees by changing the conditions under which a license fee must be paid. It is current practice that the LCC collects license fees from applicants regardless of whether an application is approved or denied. Under this bill, license fees would be collected only if an application were approved.

License fees that would be subject to proration are earmarked under MCL 436.1543 for a variety of purposes:

- Retailers' license fees and renewal fees are distributed to three sources:
  - 55% is distributed to municipalities for law enforcement agencies (or to counties for sheriff's departments) for enforcement of the Liquor Control Code and associated rules.
  - 41.5% is deposited in a special fund, annually appropriated to the LCC for conducting licensing and enforcement activities.
  - 3.5% is credited for programs for the prevention, rehabilitation, and treatment of alcoholics.
- License and license renewal fees, other than retail license and renewal fees and wholesale vendor license and renewal fees, are credited to the Grape and Wine Industry Council.
- License fees for railroad or Pullman cars, watercraft, aircraft, and transfer fees are used by the LCC for licensing and enforcement activities.
- License fees collected from direct shippers are deposited to the Direct Shipper Enforcement Revolving Fund.
- The totality of revenues from wine auction license fees are deposited in the general fund.
- Wholesale vendor license fees and license renewal fees must be deposited into the Liquor Control Enforcement and License Investigation Revolving Fund, which is used for the enforcement of the Liquor Control Code and for license investigations.

It is not possible to estimate the magnitude of the impact on revenues from these fees, since the impact depends on how many licenses and license transfers are prorated.

ARGUMENTS:

For:

A part-time resident of the state isn't taxed for the entire year, and if someone buys a replacement car, any changes in insurance rates are prorated for the remaining months of the policy. Yet a business owner opening a new liquor establishment or transferring an existing license to a different location or to a new owner at the same location has to pay the same fee as for a year-long renewal license, even if the license will be valid for a fraction of a year. To some, this seems like an unfair business model. Prorating liquor licenses for partial years of operation, as House Bill 4507 would provide for, may attract businesses. Though the savings to an individual licensee may be small, to a small business owner it represents money that could be put toward inventory, renovations, or salaries.

For:

Prorated liquor license fees, among other amendments, were first proposed in House Bill 4573 of the 2013-2014 legislative session. The bill was passed by both the House and Senate and ordered enrolled. Though it was ultimately vetoed, Governor Snyder stated in his veto message that there were elements of the bill he could support and also that "adoption of prorated fees for liquor licenses is a sensible reform." House Bill 4507, by comparison, focuses solely on prorating the liquor license fees.

Response:

Although additional provisions in the earlier bill to which the governor objected are not contained within House Bill 4507, one of the reasons given by the governor for vetoing the bill was that the prorated license fees would have resulted in an annual revenue reduction that the bill failed to address. House Bill 4507 also does not address the loss of revenue.

Against:

Opponents argue that the rationale for support of the bill is flawed. For starters, the manufacture, delivery, and sale of alcohol in the state are tightly regulated for a reason, as are the gambling and newly expanded medical marihuana industries. All can be very profitable, can be addictive, and are rife for abuse on several levels, including criminal activity. Applicants for liquor licenses are therefore closely scrutinized. Even if an initial or transfer license would be valid for less than a year, the Michigan Liquor Control Commission (LCC) must conduct the same level of investigation into applicants as it does for the annual renewal license. That is why the fees are the same. The fees are very reasonable, with most categories ranging from $25 to a few hundred dollars. Therefore, the savings to a particular business owner would be very low. In addition, the applicant has the option of requesting that the pending license be issued May 1, and when a license application is approved within months of the new license cycle, the LCC alerts applicants that issuance of the license can be delayed until May 1, so that the licensee can avoid the cost of an additional application and fee. Reportedly, almost all businesses still take immediate possession of the license, even if it will be valid for only a few weeks. This is because many businesses can more than recoup the cost of the initial license in just a few days to a few weeks after opening.

The negative fiscal impact to the state and local units of government would be greater than any benefit to licensees because the LCC would not be able to collect license fees up front for initial or transfer licenses. Currently, the fee must be included at the time the application is submitted. In fact, the term "completed application" as defined in the Liquor Control Code includes submission of the applicable licensing fee, and "completed application" is referenced throughout the Code.

Further, under the Code, potential licensees must meet certain requirements. The fee covers the cost of the investigation into all of the owners of the proposed liquor establishment to see if they meet the statutory requirements, if the proposed location is too near a church or school, and if other conditions specified in statute and departmental rules are satisfied. Under House Bill 4507, the LCC could only collect the fee if the license was approved. If the applicant did not meet the conditions for a license, which can only be determined by a thorough vetting, the agency (hence taxpayers) would have to foot the bill for the investigation. This provision would also reduce the fees allocated for local units to support law enforcement agencies' efforts in enforcing the Code's provisions.

Prorated liquor licenses are also unlikely to attract new businesses to the state or a specific locale, as most categories of liquor licenses are issued through a quota system based on the population of a geographic area. In some areas, a liquor license only becomes available if a licensee goes out of business, the licensee loses the license due to license violations, or the area sees a dramatic increase in population. Therefore, the number of licenses available in any category for any given year would be limited unless the legislature passes new legislation to increase the number of available licenses.

POSITIONS:

The Michigan Licensed Beverage Association (MLBA) indicated support for the bill. (2-14-18)

The Michigan Restaurant Association indicated support for the bill. (2-14-18)

The Associated Food Dealers of Michigan (AFPD) indicated support for the bill. (2-14-18)

The Michigan Association of Counties indicated a neutral position on the bill. (2-14-18)

A representative of the Michigan Liquor Control Commission testified in opposition to the bill. (2-14-18)

The Michigan Sheriff's Association opposes the bill. (3-22-18)

The Michigan Municipal League (MML) indicated opposition to the bill. (2-14-18)

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