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## LIQUOR CONTROL ACT RECODIFICATION

**House Bill 4454 as passed by the House  
Second Analysis (9-22-97)**

**Sponsor: Rep. Ilona Varga  
Committee: Regulatory Affairs**

### ***THE APPARENT PROBLEM:***

Since its enactment in 1933, the Michigan Liquor Control Act has been amended numerous times. Though the act regulates beer, wine, and spirits from manufacturing to distribution to retail sale, the act today is a hard to read hodge podge of provisions with little organization as to subject matter. Therefore, a person wishing to find provisions pertaining to the regulation of beer would find those provisions scattered throughout most of the act, rather than concentrated in a chapter or two.

In addition, changes in other statutes and case law, attorney general opinions, and practices by the Liquor Control Commission have rendered various existing provisions in the act obsolete. For example, language in the act taxes wines manufactured in Michigan from Michigan-grown grapes and fruits at a significantly lower tax rate than other wines. However, Attorney General Opinion 6724 of 1992 ruled that the tax preference shown to Michigan wine manufacturers discriminated against interstate commerce in violation of the Commerce Clause of the U.S. Constitution and was therefore void. In addition, a General Agreement on Tariffs And Trades (GATT) Panel Report, also in 1992, concluded that the preferential tax reduction on Michigan wines discriminated against Canadian wines in violation of GATT. Though the commission has since taxed wines equally, the obsolete language has remained in the act. Legislation has been proposed to restructure the current act into a new act that would organize provisions into chapters according to subject matter, delete obsolete provisions, and update language and terminology.

### ***THE CONTENT OF THE BILL:***

The bill would repeal the Michigan Liquor Control Act (MCL 436.1 et al). and replace it with the Michigan Liquor Control Code of 1997. The bill primarily reorganizes current provisions into chapter form by organizing the sections according to subject matter. The chapter breakdowns are as follows:

House Bill 4454 (9-22-97)

Chapter 1

Short title; definitions. (Note: a specially designated distributor license [SDD] permits a licensee to sell spirits and mixed spirit drinks in the original package for off-premise consumption; a specially designated merchant license [SDM] permits a licensee to sell beer and/or wine for off-premise consumption.)

Chapter 2

Terms, conditions, limitations, and restrictions for lawful manufacture, sale, possession, or transportation of alcoholic liquor; right, power, and duty of commission to control alcoholic beverage traffic and traffic in other alcoholic liquor; unreasonable discrimination against Michigan manufacturers prohibited; enforcement of act and rules, wilful neglect or refusal of officer to perform duties as misdemeanor, penalty; sale, delivery, or importation of alcoholic liquor; requirements and exceptions regarding original purchase and importation into state of spirits for sale, use, storage, or distribution; exceptions to act; authorized distribution agents (ADAs); appointment of ADAs; limitations of ADAs; delivery of orders by ADAs; availability of contracts for review by commission; penalty for violations of act by ADAs; ADA selling spirits to on-premise licensees; ADA making good-faith effort to hire former state employees; complaint process for former state employees against ADAs for unfair hiring practices; payments to vendors to offset costs of warehousing and delivery of spirits; creation and powers of Michigan Liquor Control Commission (LCC); selection, duty, and responsibility of LCC business manager; LCC assistants and employees, bonds; rules and regulations, public hearings; investigations and inspections by commission; seizure and use of evidence of violation; examining or copying books, records, and papers; issuance of subpoena; oath or affirmation; court order, contempt; fees of witnesses; service of subpoena; seal, orders, certified copies; LCC branch offices; revolving fund; interest of LCC members

or employees; civil liability of commission or members; establishment of state liquor stores; licensing of hotels and merchants to sell spirits for off premise consumption, rules, price; handling of liquor by LCC, gross profit, leasing and purchasing power; uniform alcoholic liquor prices fixed by commission; prices for sale of alcoholic liquor to hospitals, charitable institutions, and military establishments; discount for certain sales of alcoholic liquor.

Chapter 3

Taxes on wine and mixed spirit drink; sacramental wines; incorporation of farm mutual cooperative wineries, licensing, fee, certification of stockholders or members, manufacture and sale by corporation; grape and wine industry council; regulation of wine industry; definitions; prohibited conduct; servicing impacted sales territory; termination, cancellation, nonrenewal, or discontinuance of agreement; burden; notice; test marketing; sales and distribution; transfer of wholesaler's business; arbitration; costs; default; waiver; good faith dispute settlement; agreement binding on successor to supplier; agreements to which section applicable; civil action for actual damages; injunctive relief; procedure for resolving violation; sales territory.

Chapter 4

Regulation of beer industry; wholesalers granted exclusive sales territory by manufacturer and outstate seller of beer and malt beverages; definitions; prohibited conduct; servicing impacted sales territories; termination, cancellation, nonrenewal, or discontinuance of agreement, burden, notice; test marketing; sales and distribution; transfer of wholesaler's business; compensation for diminished value of wholesaler's business; arbitration, costs, default, waiver; good faith dispute settlement; agreement binding on successor to supplier; civil action for actual damages; liability, declaratory judgment, exemplary damages, injunctive relief; procedure for resolving violations; brewpub license, renewal and revocation; taxation, exemptions, rebate; barrel as containing 31 gallons; tax credit for eligible brewer.

Chapter 5

Licenses; expiration of full-year license; license as contract; operation of establishment upon death of licensee; part-year license; transfer of license; approval of application; request for revocation of license or permit by local legislative body; hotels; zones and anniversary dates for renewal of licenses; nontransferable tavern licenses for concessionaires at state fairgrounds; proximity of contemplated location to church or school building; transfer to location farther from church or

school; class "C" or class "B" hotel license for state-owned airport; license for publicly owned airport; municipal civic center or civic auditorium; hotel license for hotels within Mackinac Island state park; license for sale of alcohol at Presque Isle harbor marina; license issued to governing board of college or university; license for certain publicly-owned golf courses; national or international sporting event licenses; property or establishment situated in or on state-owned land; ineligibility of law enforcement officers; license fees; special license for nonprofit charitable organizations; transfer of license or stock in licensed corporation; quota for public licenses and resort licenses; additional licenses for certain establishments; license for certain events at a public university; economic development factors; exceptions for certain veterans and airports; escrowed licenses; vendor as specially designated merchant (SDM); specially designated distributor (SDD) as SDM; vendor as person; classes of vendors permitted to sell alcoholic liquors at retail; sale of wine by wine maker; conditions for wine tastings; marina as SDM or SDD; motor vehicle fuel pumps; disposition and use of retailers' license and license renewal fees, special fund.

#### Chapter 6

Wholesale licensee or applicant for wholesale license as individual, partnership, limited partnership, or corporation, and prohibitions; interest in business of other vendor prohibited; prohibition on placing certain stock in portfolio under arrangement of trust agreement and selling participating shares within state; conditions for brewers to acquire, develop, sell, lease, finance, maintain, operate, or promote real property occupied or to be occupied by another vendor; denial, revocation, or suspension of license; wholesaler as party to arrangement or contract prohibited; prohibitions to SDD or SDM license; brewer as SDM; sales or deliveries by wholesaler; aiding or assisting other vendor prohibited, exception; refund or credit of tax paid on wine, mixed spirit drink, or beer; conditions, time limitation, form and contents of claim, and supporting evidence; removal or destruction of damaged wine, beer, or mixed spirit drink; rebate of tax paid on wine or mixed spirit drink.

#### Chapter 7

Selling or furnishing alcohol to minor; penalties for violations; enforcement against licensee; consent of parent or guardian in undercover operation; defense in action for violation; annual report by commission; minor transporting or possessing alcohol in motor vehicle as misdemeanor; process of impounding vehicle as result of arresting officer's complaint; rights of lienholder; transfer of title to avoid act as misdemeanor; purchase, consumption, or possession (or attempt) of alcohol by minor; fines and sanctions; furnishing fake ID to minor;

chemical breath analysis; notice to parent or guardian; exemptions; power of law enforcement officers witnessing violation of act's prohibition regarding minors to stop and detain person; "appearance ticket" defined; plea or denial of allegations; sales to intoxicated persons prohibited.

#### Chapter 8

Granting or renewal of license; bond; providing alcohol to minor or visibly intoxicated person; actions for damage or personal injury; available defenses for licensee; rebuttable presumption; section as exclusive remedy for money damages against licensee; civil actions subject to Revised Judicature Act; retailer or applicant for retail license, proof of financial responsibility; naming insurer or surety as defendant prohibited, bankruptcy, policies and bonds to be continued from year to year; cancellation of liquor liability insurance; exemption; service of process for suit to enforce liability; notice of termination or cancellation of contract or policy by insurer; payment of judgment and costs, time limit, failure to pay, punitive damages, action against insurer; coverage and conditions of insurance policy; false statement or breach of authority or cancellation of insurance by insured; defense of a civil action by retail licensee; prohibit commission-based compensation of on-premise employees.

#### Chapter 9

Compliance with code required; suspension or revocation of license, penalties; hearing procedure; institution of criminal prosecutions; defenses; appointment of agents to hear violation cases, authority, ineligibility to serve on commission; commission prohibited from taking action against retail licensee for providing alcohol to minor unless local law enforcement officers or state police take action against minor, exceptions; seizure of alcohol and forfeiture of privileges upon revocation of license; penalties for violations of act; legislative intent; collection of and failure to pay taxes; unlicensed premises or place; unlawful consumption of alcohol; exceptions; section 10019 neither repealed or amended; "consideration" defined; possession or consumption of alcohol on public highway or in park, place of amusement, or publicly owned area; authority of local governmental unit or state department or agency to prohibit possession or consumption of alcohol; liability of vendor; penalty for forging documents, labels, or stamps; sale or trade of ceramic commemorative bottles by collector; authority of commission to regulate warehouse receipts for alcoholic liquor; liberal construction of act.

#### Chapter 10

Armories, air bases, naval installations and state military reservation; false and fraudulent statements; adulterated

and misbranded liquors, refilling bottles, exceptions; search warrants; seizures by execution; bankruptcy, payments; posting printed price list; cash sales at state liquor stores to licensees, exceptions; awarding unopened alcoholic liquor pursuant to lawful fund raising activity; sterilization of glasses; sales in hotel rooms; purchase or serving of food; no removing of liquor from the premises where sold for on-premise consumption; pinball machines; giving alcohol away; samplings or tastings of alcohol; sales to intoxicated persons prohibited; sampling or tasting of alcohol generally.

#### Chapter 11

Sale of spirits and mixed spirit drink, in addition to beer and wine, for on-premise consumption allowed through referendum by local governmental unit; procedure of submission of question to electors; referendum for annexation of territory to city prohibiting such sale; application for and approval of licenses for on-premise consumption of spirits and mixed spirit drink after approval by electors: county option for manufacture and sale of alcohol, form of ballot, notice of prohibition; adoption of ordinance prohibiting retail sale of alcohol; referendum for Sunday sale of beer and wine, petition, form of ballot; selling at retail, giving away, furnishing, or buying spirits or mixed spirit drink on Sunday for on- or off-premise consumption; resolution for certain Sunday sales; petition; form of ballot; sales of alcohol prohibited from December 24 to 26; legislative bodies authorized to prohibit sale of alcohol on certain days; additional fee for approved Sunday sales of spirits or mixed spirit drink.

#### Chapter 12

Specific tax on spirits, proceeds to general fund, tax refund in case of repeal of section; special tax on spirits, proceeds to state school aid fund; specific tax on spirits consumed off premises, proceeds to liquor purchase revolving fund; legislative finding and declaration; specific tax on sale of spirits for on- and off-premise consumption, proceeds to state convention facility development fund, limitation on effective date, construction of section.

#### Chapter 13

Repealed sections.

\* \* \*

In addition to reorganization of sections, the bill would make the following substantive changes:

\* Currently, a wine maker may sell his or her wine in a restaurant located on the premises of the winery that

is owned, or leased to another person, by the wine maker.

The bill would instead specify that the restaurant would have to be "owned by another person or operated under an agreement approved by the commission and located on the premises where the wine maker is licensed."

\*The commission would have to enter into a performance contract with each authorized distribution agent.

\*Authorized distribution agents would have to provide retailers with access to a computer application that had the capability to determine whether certain spirits were currently available for delivery.

\*The act requires that the minimum order of spirits to an ADA by a licensee be set by the commission and be a sufficient number of bottles to make up at least one case but not more than two cases. The bill would require an ADA to fill a partial order within the time frame established for the minimum order if the ADA did not have sufficient stock to fill a retailer's order that otherwise met the minimum requirement.

\* Under the act, the commission may issue special licenses to nonprofit organizations. The special license allows the nonprofit group to sell beer, wine, or spirits, typically in concert with a fundraising event such as a millionaire party (Las Vegas Night). In addition to current requirements, the bill would clarify that a person or organization would have to demonstrate an existence separate from an affiliated umbrella organization. If the separate existence was demonstrated, the commission would be prohibited from denying a special license solely by the applicant's affiliation with an organization that was also eligible for a special license.

\*Currently, all money deposited by the commission with the state treasurer is credited to the general fund and available for general fund purposes. The bill would instead specify that all money deposited by the commissioner, including interest earnings on common cash attributable to the commission's revolving fund, would be credited to the revolving fund and available to the commission for administration of the act.

\*The bill would place in statute a provision that is currently in the Michigan Administrative rules that requires the commission to issue only one specially designated distributor (SDD) license for each 3,000 of population in cities, townships, or incorporated villages.

\* "Person" is currently defined in the act as "any person, firm, partnership, association or corporation". The bill would expand the definition of "person" to include "an individual, firm, partnership, limited partnership, association, limited liability company, or corporation".

\* The bill would specify that rules adopted by the commission would have to be promulgated under the

Administrative Procedures Act of 1969 (MCL 24.201 et al).

\* The bill would change "warehouseman" (a license classification that permits a licensee to store alcoholic beverages) to "warehouser".

\* Currently, the act prohibits a person from making false or fraudulent statements to the commission, either orally or in writing, for the purpose of enabling or assisting a person to evade the provisions of the act. The bill would specify that a person making such statements would be subject to certain penalties as prescribed in the act.

\* The act requires that alcohol for consumption on the premises be sold in accordance with a printed price list posted conspicuously in a prominent place on the licensed premises. The bill would require instead that the printed price list be readily available to customers.

\* \* \*

The bill would delete the following provisions:

\* In a provision pertaining to licensing hotels and established merchants for the sale of spirits for off-premise consumption, the bill would delete state residency requirements and the requirement for merchants to be established. (Note: "Established merchant" is defined in rules [R 436.1101] as a person who owns or has owned a drugstore, patent medicine store, supermarket, grocery store, delicatessen, party store, meat market, or department store for one year at some location.)

\* Under the act, wines manufactured in Michigan from Michigan-grown grapes and fruits are entitled to tax reductions. Wines sold in Michigan are currently taxed at the rate of 13.5 cents per liter for wines containing less than 16 percent alcohol and 20 cents per liter for wines containing more than 16 percent alcohol. However, wines manufactured in Michigan from Michigan-grown grapes and fruits receive a 12.5 and 19 cent reduction in taxes respectively. The bill would delete the tax reduction for these wines, thereby taxing all wines sold in the state at the same rate.

\* The bill would delete a provision that prohibited the commission from issuing licenses to manufacturers (other than manufacturers of wine, mixed spirit drink, beer, or malt beverages, or distillers and rectifiers) unless at least 25 percent of the capital stock was owned by residents of the state.

\* The bill would delete a provision allowing the commission to require a retailer or applicant for a retail

license to obtain liability insurance in lieu of a surety bond.

\* The bill would delete a provision permitting the commission to promulgate a rule prohibiting licensees from purchasing, receiving, possessing, or selling beer manufactured in designated states.

\* \* \*

The bill would repeal the following acts and place their respective provisions within the new code:

-- Public Act 94 of 1959 (MCL 436.101 to 436.103) which imposes a 4 percent specific tax on the retail price of spirits, proceeds of which are deposited in the state school aid fund.

-- Public Act 218 of 1962 (MCL 436.121 to 436.125) which imposes a 4 percent specific tax on the retail price of spirits, proceeds of which are credited to the general fund.

-- Public Act 213 of 1972 (MCL 436.131 to)436.133 which imposes a 1.85 percent specific tax on the retail price of spirits for off-premise consumption, proceeds of which are credited to the liquor purchase revolving fund within the state treasury.

-- The Tourism and Convention Facility Promotion Tax Act (MCL 436.141 to 436.148) which imposes a 4 percent specific tax on the retail price of spirits for consumption both on and off the premises, proceeds which are credited to the convention facility development fund within the state treasury.

\* \* \*

Effective date. The bill would take effect on January 1, 1998.

### **BACKGROUND INFORMATION:**

House Bill 4454 is nearly identical to legislation introduced in the 1995-96 legislative session.

### **FISCAL IMPLICATIONS:**

The House Fiscal Agency reports that because the bill is primarily a recodification of the act and contains few substantive changes, it would have no fiscal implications for state or local governments. The provision to credit the Liquor Control Commission's revolving fund with commission deposits and interest earnings on common cash would not result in an impact on the net general fund because revenues in the revolving fund would continue to

be transferred to the general fund on a regular basis. Any costs associated with the bill's requirement that the LCC enter into a performance contract with each of the authorized distribution agents (ADAs) for the distribution of spirits should be absorbed by current administrative mechanisms. Other provisions pertaining to ADAs requiring minimum case orders would be borne by the ADAs and not the state. (9-3-97)

### **ARGUMENTS:**

#### **For:**

The bill would go a long way toward creating a more organized, easier to use act. The current Liquor Control Act is confusing and difficult to use because many amendments through the years have tended to be added in a chronological order rather than being grouped in sections with similar subject matter. The result is that provisions pertaining to a single subject may be strewn randomly throughout the entire act, rather than being concentrated with other provisions on the same subject. The bill would organize current provisions into separate chapters such as definitions, wine regulation, beer regulation, hotel and resort licenses, and prohibitions on minors in regards to alcohol, to name a few. The provision to require the LCC to enter into a performance contract with an authorized distribution agent (ADA) would establish conformity with other business entities who perform services previously provided by the state, and would allow for closer monitoring of the level of service provided by the ADAs. Further, the requirement that ADAs treat a partial order (that would have been met the minimum case order if the ADA were not out of stock of certain items) as a full order would put into statute a practice currently required by commission order. Reportedly, the other new provision affecting ADAs, the requirement for ADAs to provide retailers access to a computer application that would provide information as to the availability of products for delivery, reflects a decision on the part of the ADAs to provide better service by tracking inventory more closely.

What few other changes have been made are minor, such as permitting the interest earned on the commission's revolving fund to be credited to the fund (an accounting change rather than a policy change), changing "warehouseman" to "warehouser", and permitting an on-premise licensee to have a printed price list readily available for customers' use rather than requiring the licensee to post the list conspicuously in a prominent place. The provision to restrict special licenses to affiliated groups of nonprofit organizations that can demonstrate an existence separate from the parent organization would prevent abuses by organizations applying for more than the allotted five

annual licenses through creating committees or other offshoots of the

parent organization. Other changes have been made to bring the act into conformity with more recent statutory and case law changes, as well as attorney general opinions. Many in the industry agree that the act is in need of restructuring, and that the bill would provide much needed organization and delete obsolete provisions without changing current law substantially.

***Response:***

Though the bill represents a stellar attempt to make the liquor act more user friendly, a few problems still remain. First, the change in language regarding a wine maker being able to sell his or her own wine at a restaurant on the winery's premises that would have to be owned by someone else could cause significant problems, as currently all winery restaurants are owned by the wine maker. The language should be amended to permit either a wine maker or another person (with the approval of the commission) to own a restaurant on the winery's premises, which would better reflect the intent of the language change. Further, a provision pertaining to brandy makers selling brandy at restaurants located on the brandy manufacturers' premises should also be amended to conform with the wine makers' provision.

Second, the term "affiliated umbrella organization" in the provision regarding special licenses for nonprofit organizations would, according to representatives of the licensing division of the commission, prove problematic, as the provision could now be read as allowing special licenses to only be granted to the independent offshoots of an organization, and not the parent organization itself.

Third, the requirement to establish performance contracts between the state and the authorized distribution agents (ADAs) would create an unnecessary administrative burden. The act provides for ADAs to be subject to the same suspension, revocation, forfeiture, and penalties for violations of the act, administrative rules, or commission orders that face other licensees under the act. Under commission orders, ADAs must be certified by the commission. Should an ADA not perform satisfactorily, the commission can suspend or revoke his or her license. Further, ADAs are required to post a bond. The language in the bond states that the commission can collect damages as a result of the ADA's failure to respond to his or her duties. Where complaints were high (500 to 700 daily according to LCC staff) in the days following the privatization of liquor distribution, they have now dropped off to about three to four per day. Therefore, some would argue that the act, administrative rules, commission orders, and the bond in effect work to do what a performance contract would, and thus placing this requirement in statute would be redundant.



**POSITIONS:**

The Michigan Restaurant Association supports the bill. (9-17-97)

The Michigan Hotel, Motel and Resort Association supports the bill. (9-16-97)

The Michigan Licensed Beverage Association (MLBA) supports the bill. (9-17-97)

The Michigan Interfaith Council on Alcohol Problems (MICAP) supports the recodification of the Liquor Control Act. (9-16-97)

The Michigan Beer and Wine Wholesalers Association supports the bill but is neutral on the new requirements pertaining to ADAs. (9-17-97)

The Michigan Liquor Control Commission does not oppose the concept of recodification of the Liquor Control Act, but is still studying the impact of the new requirements pertaining to ADAs. (9-22-97)

Analyst: S. Stutzky

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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.