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BILL ANALYSIS

Senate Fiscal Agency

Lansing, Michigan 48909

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Senate Bill 387 (as passed by the Senate)
Sponsor: Senator James A. Barcia
Committee: Regulatory Affairs

Date Completed: 1-3-90

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RATIONALE

Some people reportedly have expressed interest in being licensed as a "brewpub", which colloquially refers to a restaurant that manufactures its own beer for consumption on the premises by its patrons. Currently, brewpubs are not allowed under Michigan's three-tiered liquor licensure system, which comprises manufacturers, wholesalers, and retailers whose responsibilities are carefully delineated and segregated. It has been suggested, however, that licensure as a brewpub could add a unique and attractive character to some small Michigan businesses without compromising the three-tiered system.

CONTENT

The bill would amend the Michigan Liquor Control Act to provide for the licensure of "brewpubs", which would be restaurants that had a license to sell beer and wine, or beer, wine, and spirits, and that were licensed by the Liquor Control Commission (LCC) to manufacture beer and sold not more than 2,000 barrels per year for consumption on the premises where the beer was brewed. The fee for a brewpub license would be \$100, and beer sold by a brewpub would be subject to the current tax of \$6.30 per barrel that is imposed on all beer manufactured or sold in this State. A restaurant could not obtain or renew a brewpub license unless it gave the LCC evidence that at least 25% of the restaurant's gross sales during the one-year licensure period were

derived from the sale of food and nonalcoholic beverages prepared for consumption on the premises.

To be licensed as a brewpub, a restaurant would have to be licensed under the Public Health Code and have one of the following liquor licenses (which are limited to sales for on-premises consumption): a Class C license or a Class B hotel license (which allow the sale of beer, wine, and spirits), or a tavern license or a Class A hotel license (for the sale of beer and wine). A person could not, directly or indirectly, have an interest in more than one brewpub.

A brewpub would be required to possess the necessary equipment for a satisfactory operation, which would have to be maintained in good working order and in a sanitary condition. Agricultural products processed by a manufacturer would have to comply with laws and rules of the Department of Agriculture. A brewpub could not sell beer in this State unless it did all of the following:

- Provided a label that truthfully described the content of the container. The description would have to comply with Federal malt beverage regulations.
- Received from the LCC a registration number that indicated the Commission's approval of the sale of the beer.
- Used a removable tap marker or sign that was placed on the draft beer dispenser and complied with LCC orders

S.B. 387 (1-3-90)

relating to its cost.

MCL 436.19 et al.

FISCAL IMPACT

The bill would have an indeterminate fiscal impact on State and local government. The number of brewpubs that would be licensed and the number of barrels of beer that would be sold cannot be determined.

For each \$100 annual brewpub license that would be issued by the Liquor Control Commission, the State would receive \$45 revenue and the local government would receive \$55 revenue for enforcement of the State's liquor laws.

Assuming that each brewpub that would be licensed by the LCC would sell the maximum 2,000 barrels of beer annually, and assuming that all sales would be an increase to current sales, each brewpub would generate an additional \$12,600 annually in beer taxes that would be credited to the State General Fund and approximately an additional \$33,000 annually in sales taxes.

ARGUMENTS

Supporting Argument

The bill would enable Michigan to join other states that license brewpubs, which could boost the attractiveness and success of small businesses in this State. It is not expected, however, that the bill would lead to a proliferation of brewpubs, since several factors would influence the use of this new license. First, a restaurant would have to have the room necessary to manufacture beer, and not many restaurants would be willing to give up their kitchen space or table space to do so. Second, an establishment would have to absorb the expense of manufacturing beer, such as the cost of purchasing equipment and disposing of leftover grain. In addition, a restaurant would have to have or acquire the knowledge of making beer, which is not a simple matter. While these considerations would reduce the number of restaurants seeking licensure as a brewpub, other protections built into the bill would prevent this opportunity from being abused. For instance, an establishment already would have to have a liquor license, the beer

would have to be brewed and consumed on the same premises, a brewpub could not make more than 2,000 barrels per year, a brewpub would have to verify annually that at least 25% of its gross sales were of food or nonalcoholic beverage, and a person could not have an interest in more than one brewpub. There are enough proposed constraints to ensure that a brewpub couldn't manufacture so much beer that it would be tempted to ship the excess to other outlets, but at the same time the brewpub wouldn't run out of beer for its own on-premises sales.

Supporting Argument

Various provisions of the bill would ensure that brewpubs did not compete significantly with other members of the liquor industry or have an unfair advantage over them. Because brewpubs would be limited to producing a maximum of 2,000 barrels of beer annually, they would still have to purchase beer from wholesalers. Brewpubs also would be subject to the same tax on beer as manufacturers, and--like retailers--they would not be allowed to ship their own beer around.

Supporting Argument

The bill would address public health concerns in several ways. Like other brewers, brewpubs would be subject to requirements pertaining to keeping their equipment sanitary and in good working order, providing descriptive labels, receiving LCC approval, and using a removable tap marker or sign on draft beer dispensers. Agricultural products processed by a brewpub would have to comply with Department of Agriculture standards. In addition, the licensed premises would continue to be subject to the jurisdiction of local health authorities.

Opposing Argument

It seems unfair to limit brewpub licensure to restaurants that would be capable of manufacturing and selling their beer on the same premises. If an establishment wanted to be licensed as a brewpub but didn't have available kitchen space in which to make beer, why shouldn't it be allowed to brew elsewhere and transport the beer to the restaurant?

Response: Requiring a brewpub to manufacture and sell its beer at one location is necessary to protect the integrity of Michigan's three-tiered system of manufacturer, distributor, and retailer. The unique

restrictions on a brewpub would keep it different from each of those entities, whereas allowing a brewpub to brew and sell at different sites could blur the distinctions between those categories. Furthermore, the three-tiered approach creates a paper trail for the imposition and collection of taxes; a person who did both brewing and shipping would not be subject to the same checks and balances.

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