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BILL ANALYSIS

Senate Fiscal Agency

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Senate Bill 174 (Substitute S-2 as passed by the Senate)

Sponsor: Senator Jack Faxon

Committee: Regulatory Affairs

Mich. State Law Library

Date Completed: 7-28-88

RATIONALE

The Michigan Liquor Control Act provides for several types of licenses for on-premises consumption of alcoholic beverages. Aside from resort or other special licenses, there are, basically, four licenses in this category: the class C license, which licenses the sale of beer, wine, and spirits; the class B hotel license, which allows a hotel to sell beer, wine, and spirits; the class A hotel license, which allows a hotel to sell only beer and wine; and the tavern license, which licenses an establishment to sell only beer and wine. All of these types of licenses fall under the Act's basic population quota provision that a license is not to be granted for the sale of alcoholic liquor for on-premises consumption "in excess of one license for each 1,500 of population or major fraction thereof". In other words, there are not separate quotas for each type of licensed establishment: only one on-premise license—class A, B, C, or tavern—is available for each 1,500 people.

There are some areas of the State that have reached their quota of liquor licenses, and some areas of the State with quotas established after the 1980 census that, because of rapidly increasing population or population that swells during business hours, do not reflect accurately the number of people likely to patronize bars or licensed restaurants there. In addition, some businesses that exist or would like to open in areas where liquor licenses are scarce want class C licenses and are willing and able to pay the high price they command. Other restaurants in these areas, however, would like to be able to sell beer and wine in order to complement the type of food they serve but have no interest in selling hard liquor or operating a bar. These establishments have not been able to do this because they cannot afford to or do not wish to compete with the establishments vying for class C licenses, which many regard as more desirable than tavern licenses and which, at any rate, already occupy or are reserved to occupy spaces within the quota limits. In some instances, restaurants have simply been unable to persuade the local governing bodies in their areas to allow the Liquor Control Commission (LCC) to issue to them any licenses that may still be available under existing quotas. For these reasons, some have proposed that a limited number of new, additional tavern licenses be made available for such restaurants.

CONTENT

The bill would amend the Liquor Control Act to allow the LCC to issue up to 50 tavern licenses (sale of beer and wine for on-premises consumption only) for each of the years 1988 through 1990 to businesses that meet the following qualifications:

- The business is a full service restaurant that is open to the public for food service at least 10 hours per day, five days per week, and prepares food on the premises.
- At least 75% of the business' gross income is derived from food sales for on-premises consumption.
- The business has dining facilities that seat at least 25 people.
- The business had been in active operation for at least six months immediately prior to the date of application at the location for which a license was requested.

The Commission would be required to revoke a tavern license issued under the bill, after notice and proper hearing, if in any quarter of a licensing year a business' food sales for on-premises consumption represented less than 50% of its gross receipts.

A tavern license issued under the bill could not be reclassified to any other type of license that would permit the sale of spirits for on-premises consumption, nor could any other type of license that allowed the sale of alcohol for off-premises consumption be issued in conjunction with such a tavern license. In addition, a business licensed under the bill could not contain a bar. A tavern license issued under the bill could not be transferred to another location and would have to be surrendered to the Commission if the licensee went out of business.

Not more than one license could be issued under the bill to any individual, partnership, limited partnership, corporation, or any combination of these entities, including stockholders, general partners, or limited partners. The Commission could issue licenses under the bill without regard to the order in which applications were received. The bill would require the Commission to consider, in issuing licenses, areas with increasing population and the economic development factors of an area.

Proposed MCL 436.17i

FISCAL IMPACT

The bill would have an indeterminate fiscal impact on State and local government. The up-to-50 additional tavern licenses that would be authorized would increase revenues to State or local governments by up to \$12,500 (\$250 X 50 licenses). The increased cost to license and regulate the 50 additional licenses would theoretically be the same as the increased revenues. Whether that would be true in practice cannot be determined.

ARGUMENTS

OVER

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Supporting Argument

Many feel that beer and wine are almost indispensable to the enjoyment of certain foods or cuisine. Yet some of Michigan's restaurants that are noted if not renowned for the fine meals they serve have been unable to secure licenses that would allow them to offer beer or wine along with lunch or dinner. This predicament has not enhanced such restaurants' reputation; in fact, it has even led, in some cases, to the embarrassing spectacle of patrons' disguising their own bottles of wine in brown bags and sneaking them into restaurants, simply to enjoy a glass or two with their meal. No restaurateur or customer should have to put up with the humiliation of this practice, especially when a harmless remedy such as the bill would offer is available.

Those in the business know that if a bar or restaurant owner really wants to make money from the sale of liquor, he or she will try to get a class C license, which allows the generally more profitable sale of spirits. This suggests that those who would seek the new tavern licenses are not trying to compete with class C licensees, but rather to enhance the pleasurable atmosphere they have cultivated in their establishments. Allowing them to obtain tavern licenses would please their patrons and no doubt increase the contributions these businesses have already made to their area's economic development and, in some areas, enhance tourism.

Supporting Argument

The new tavern licenses would be welcome in restaurants that specialize in gourmet cuisine, but it is important to note that they also would be available to other restaurants—such as delicatessens, pizzerias, and hamburger and sandwich shops—that met the bill's criteria. The licenses would not be limited to one class of restaurant or one type of customer exclusively, and the LCC would be able to use its discretion in seeing that a range of tastes were catered to as it allocated the licenses across the State, like it has already done in the allocation of resort licenses.

Response: The Commission could be given too much discretion under the bill. There is currently nothing in the bill to prevent the LCC from issuing all the new tavern licenses to restaurants in one small area of the State.

Opposing Argument

If the ideal number of licenses statewide is based upon one license per 1,500 people, then the bill would further erode this balance. The number of on-premise licenses that have been issued in Michigan currently exceeds the number that would be allowed under the quota system based on overall State population. Population shifts have resulted in the over-licensing of major metropolitan areas, despite the fact that other areas of the State may be "under-licensed", considering that they serve a large influx of population at certain times of day. Some have questioned the wisdom of admitting more licensees into a market where there is, at least in one sense, an abundance of them. First, doing so could dilute the market for existing licensees who have made substantial investments to secure a new or transferred license. These licensees might well resent the State's changing the rules of the game in a way that increases competition for them. Second, when the State is engaged in other efforts to combat problems of drunk driving and alcohol abuse, it could be seen as inconsistent by suddenly providing for 50 new on-premises licenses per year. If the issuance of new tavern licenses is really

justified, perhaps it would be advisable to proceed with caution and offer fewer of them at first, say 25 per year instead of 50, until the impact of issuing the licenses could be assessed.

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