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SFA



BILL ANALYSIS

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Senate Bill 682 (as enrolled)

PUBLIC ACT 197 of 1997

Sponsor: Senator Dianne Byrum

Senate Committee: Economic Development, International Trade and Regulatory Affairs

House Committee: Regulatory Affairs

Date Completed: 1-26-98

RATIONALE

Under the Michigan Liquor Control Act, if a person or his or her spouse held a public office that involved the enforcement of Federal, State, or local penal laws, the person was prohibited from obtaining or having an interest in a liquor license, regardless of the location of the licensed establishment or the duration of the spouse's interest in it. While the prohibition did not extend to volunteer police, mayors, city council members, or village presidents, it otherwise applied to law enforcement personnel, elected or appointed officeholders, and their spouses. This prohibition created problems for various individuals.

In one situation, an attorney had been hired to represent the Township of Leroy and the Village of Tekonsha, in the southwestern and southern parts of Calhoun County, respectively. The attorney, however, held an ownership interest in a golf course in Convis Township, which is at the northern end of the county. Apparently, the attorney had to resign his employment with Leroy Township and Tekonsha before the Liquor Control Commission would issue a liquor license to the golf course.

Another situation involved a city's chief of police and a woman who owned a deli that had a liquor license. The couple wished to get married but could not legally do so unless the police chief resigned from his position or the deli owner sold her business, due to the prohibition in the Liquor Control Act.

Reportedly, these types of situations were not uncommon. It was suggested that exceptions to the statutory prohibition should be made in order to accommodate individuals' career choices and personal relationships.

CONTENT

The bill amended the Michigan Liquor Control Act to allow a law enforcement officer or public officeholder to obtain or have an interest in a liquor license under certain circumstances. The bill also allows the spouse of such a person to obtain or have an interest in a liquor license if certain conditions are met.

Specifically, the bill provides that a person who holds or whose spouse holds, by appointment or election, a public office involving the duty to enforce Federal, State, or local penal laws or ordinances, may not obtain a liquor license, or have a direct or indirect interest in a liquor license, if the activity regulated by the license occurs in the same local unit of government within which the person enforces State or local penal laws, unless the person is contractually prohibited from enforcing the Act.

In addition, under the bill, the prohibition does not apply to the spouse of a law enforcement officer or public officeholder if the spouse held a license or an interest in a license for at least three years before marrying the official. The prohibition also does not apply to a spouse who has voting rights in a public or private club holding a liquor license, which rights are derived from ownership of shares to the club, and the spouse participates as a member in good standing of the club or of an advisory board but does not participate in the club's day-to-day operation.

The bill further provides that in the case of any licensee excepted from the Act's general prohibition, the Liquor Control Commission may periodically review all circumstances of the licensee and his or her spouse regarding the exception. The Commission also may review and monitor any complaints it receives regarding inappropriate enforcement of the Act by or against a person excepted from the prohibition.

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

The Liquor Control Act's restriction on who could obtain a liquor license was inflexible and overly broad. This Prohibition-era restriction, which assumed an inherent conflict of interest, also was outdated. Arguably, a law enforcement officer or public officeholder might not be able to enforce objectively the liquor laws in regard to an establishment in which he or she has an interest. This does not apply, however, if the establishment is located outside the official's jurisdiction. In regard to the example involving the attorney who held an interest in a golf course, the golf course was virtually at the opposite end of the county from the municipalities that had retained the attorney. Moreover, the general prohibition still would have applied even if the golf course were at the opposite end of the State. Although the bill allows public officials to obtain a liquor license for an establishment outside of their jurisdiction, the Act's prohibition still applies to those situations in which a conflict of interest actually could exist.

Supporting Argument

The former law unduly interfered with the ability of public officials and liquor licensees to get married. While it might be reasonable to assume, for example, that a police officer would have difficulty raiding a bar owned by his or her spouse, the same concern could apply to other types of spouse-owned establishments or, for that matter, to establishments owned by other family members. Police officers and public officials do have codes of ethics and can take steps to remove themselves from official action that would create a conflict of interest. Furthermore, allowing a public official to marry a liquor licensee may result in greater scrutiny by the Liquor Control Commission (LCC), since the relationship otherwise would continue but without enhanced LCC oversight.

Supporting Argument

While the bill creates exceptions to the general prohibition against public officials' obtaining a liquor license, or being married to a licensee, it also creates protections by specifying that the LCC may periodically review all circumstances of the licensee and his or her spouse regarding an exception. To safeguard against actual or

perceived conflicts of interest, the bill makes it clear that the Commission may review and monitor any complaints about inappropriate enforcement by or against a person excepted from the general prohibition. This should address concerns about the potential for preferential treatment toward an official's or spouse's establishment.

Legislative Analyst: S. Lowe

FISCAL IMPACT

The bill will have no fiscal impact on State or local government.

Fiscal Analyst: M. Tyszkiewicz

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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.