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ESCROWED LIQUOR LICENSES

House Bill 4232 (Substitute H-3)
First Analysis (5-21-03)

Sponsor: Rep. James Koetje
Committee: Criminal Justice

THE APPARENT PROBLEM:

Historically, an on-premises liquor license could not be transferred from the local governmental unit to which it was originally granted to an establishment in another locale. Legislation in the mid-1990s amended the liquor code to allow on-premises licenses that are held in escrow to be transferred to any governmental unit within the same county, with the exception of a county with a population between 500,000 and 700,000. At the time of the legislation, Kent County officials did not want to be included in the county-wide transferability of escrowed liquor licenses, and the population qualifier was added so to exclude the county. Reportedly, many in Kent County are now interested in being able to transfer escrowed on-premises liquor licenses across local jurisdictional lines. However, the City of Grand Rapids would still prefer to have an exemption. Legislation has been offered to allow businesses and local officials in Kent County to transfer escrowed licenses to other local units (as occurs in other counties), while retaining the exemption for the City of Grand Rapids.

THE CONTENT OF THE BILL:

Currently, a county with a population less than 500,000 or more than 700,000 may transfer an available on-premise escrowed liquor license from one governmental unit to another within that county. House Bill 4232 would amend the Michigan Liquor Control Code to remove the population restriction on the countywide transferability of escrowed liquor licenses. Thus, under the bill, escrowed liquor licenses could be transferred to any governmental unit within a county in all of the state's 83 counties. (Kent County, with a population of 574,335, is the only county that cannot transfer an escrowed liquor license countywide; an escrowed license can only be transferred to a location within the governmental unit to which it was originally issued.)

However, the bill would specify that if the on-premises escrowed license had been issued to a location within a city with a population of over

190,000 but under 300,000 (only Grand Rapids fits this population category), the on-premises escrowed license could not be transferred to an applicant whose proposed operation was located within any other local governmental unit in the county in which that city was located. In addition, an escrowed license located within any local governmental unit in that county would not be transferable into the excluded city.

Further, an applicant for an on-premise resort or resort economic development license must submit verification that he or she had first tried to secure an escrowed license or quota license and the Liquor Control Commission is precluded from issuing resort licenses if the local governmental unit or county within the resort or resort economic development area has not issued all available on-premises licenses or escrowed licenses. The bill would make similar changes to these provisions so that they would apply to all jurisdictions in the state except for a city with a population of over 190,000 but less than 300,000.

MCL 436.1531

BACKGROUND INFORMATION:

On-premises liquor licenses, which allow restaurants, bars, and hotels to serve alcohol to their patrons on the licensed premises, are issued based on population. For each 1,500 of population (or major fraction thereof), one license is issued to the local governmental unit. Licensees must be approved by both the Liquor Control Commission and the local city council or township board.

When a restaurant, bar, or hotel with an on-premises liquor license goes out of business, the license can be held in escrow by the Liquor Control Commission until the license's expiration date. (The licensee can apply for an extension for a year beyond the license's expiration date. Any further extensions are subject to commission approval.) Escrowed on-premises liquor licenses are allowed to be transferred from one local

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unit to another within the same county, but the license will be counted against the local governmental unit that originally issued the license. If the local governmental unit spanned more than one county, an escrowed license could be transferred to any governmental unit within either county.

In addition to the on-premises licenses awarded according to the population quota, the commission is authorized by statute to issue up to 50 additional on-premises licenses for establishments in a development district and may issue up to 10 additional licenses (in years designated by statute) in a resort area. A resort license may be transferred to another owner, but may not be transferred to another location.

FISCAL IMPLICATIONS:

Fiscal information is not available at present.

ARGUMENTS:

For:

Escrowing an on-premises liquor license allows a business owner time to reopen the business, start a new business, or sell the license in order to recoup some of his or her business investment. Escrowed licenses can be transferred anywhere within the county of original issue except for Kent County. At the time that legislation allowing county-wide transfers of escrowed liquor licenses was adopted, Kent County preferred to operate solely within the population quota system. Now, reportedly, many who were opposed to county-wide transfers of escrowed licenses have seen that there could be some benefits. However, the City of Grand Rapids has indicated that it would prefer to not transfer its escrowed licenses to other locations within the county. The bill would solve the dilemma by amending the liquor code to allow businesses and local governmental units to transfer escrowed licenses within Kent County, as all other counties currently do. But, the bill would continue to exclude the City of Grand Rapids. This means that Grand Rapids could not transfer one of its escrowed licenses to any other city or town in the county, nor could a business within the city apply to receive an escrowed license from another town or city.

Response:

In *State of Michigan v Wayne County Clerk*, SC docket No. 121918 (July 17, 2002), the Michigan Supreme Court ruled that where a statute cannot apply to other units of government, it fails as a general act and must therefore be construed to be a

local act. The state constitution requires all local acts to be enacted by a super-majority vote of both houses (two-thirds of each house) and be approved by a majority of the local electors in a local referendum. The bill was crafted to exclude the City of Grand Rapids, and only the City of Grand Rapids, from the county-wide transferability of escrowed liquor licenses. Perhaps bill should be scrutinized further to determine if it could be considered a local act that would require passage by a super-majority of both houses and a local referendum.

Reply:

The state supreme court said, in the case cited, that “population-based statutes have been upheld against claims that they constitute local acts where it is possible that other municipalities or counties can qualify for inclusion if their populations change.” Other cities could conceivably reach the population level cited in this bill and so fall under its provisions. In the 2002 court case, the court was addressing a legislative requirement that a city of a specified size (Detroit) place a question on the ballot to change from an at-large city council to a single-member district plan. The court noted that no city could meet the population requirement by the date of the election (because no census would intervene). This is what made the law in question a local act in the court’s eyes.

POSITIONS:

The Michigan Restaurant Association supports the bill. (5-20-03)

A representative of the Michigan Licensed Beverage Association (MLBA) indicated support for the bill. (5-20-03)

The City of Grand Rapids has no formal position on the bill in its current form. (5-21-03)

Analyst: S. Stutzky

■ 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.