

REQUIRE TAGS ON BEER KEGS

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Senate Bill 470 as passed by the Senate

Sponsor: Sen. Alan Sanborn

House Committee: Regulatory Reform

Senate Committee: Economic Development and Regulatory Reform

First Analysis (10-29-10)

BRIEF SUMMARY: The bill would amend the Michigan Liquor Code to require all kegs of beer sold at retail to have an attached identification tag, to require ID and a signature to purchase a keg, and to create an administrative fine for retailers and a criminal penalty for consumers for certain violations.

FISCAL IMPACT: The bill would have fiscal implications for state and local governments, as discussed in detail later in the analysis.

THE APPARENT PROBLEM:

Despite the enactment of zero tolerance laws that prohibit underage drinking and sales or furnishing of alcohol to minors, many youths still are able to easily access alcoholic beverages. According to the Michigan Prevention Association, underage drinking costs the citizens of Michigan \$641 million each year for direct costs of medical care and loss of work. Add in associated costs for pain and suffering, property damage, criminal offenses, and fetal alcohol syndrome babies born to teen moms, and the yearly cost is said to exceed \$2 billion.

Statistics compiled by various sources reveal that alcohol remains a leading factor in the three main causes of death for 15- to 24-year olds (traffic accidents, homicides, and suicides), but alcohol use among teens also increases the risk for deaths by alcohol poisoning, criminal behavior, being the victim of a crime, teen pregnancies, STDs, and developing a substance abuse problem as an adult.

Most retail stores, bars, and restaurants in Michigan comply with state laws and do not sell alcohol to minors. Instead, minors often turn to social sources, such as young adults, who may be willing to buy alcohol for— or provide alcohol to their underage friends or acquaintances. In particular, keg parties, which tend to attract a large number of attendees and have an open attendance policy, have provided an easy source of alcohol for teens. Often the kegs are unattended or unsupervised by the party sponsors— partygoers simply serve themselves. The ban on furnishing beer to minors is often unenforceable because it is difficult, if not impossible, to trace who supplied the keg to the party. At least 31 states and some college campuses have addressed this issue by enacting some type of keg ID or keg registration that enables law enforcement to track the purchaser of a keg and hold that person responsible for any underage drinking at the

party. Some feel that Michigan should take a similar approach and stem the tide of underage drinking by also establishing a keg registration process.

THE CONTENT OF THE BILL:

Among other things, the bill, which is virtually identical to House Bill 4565, would add a new section to the Michigan Liquor Code (MCL 436.1029) to require all kegs of beer sold at retail to have an attached identification tag, to require ID and a signature to purchase a keg, and to create an administrative fine for retailers and a criminal penalty for consumers for certain violations.

Applicability of the bill. For purposes of the bill, "keg" would mean any brewery-sealed individual container having liquid capacity of five gallons or more. The bill would apply only to kegs sold at retail for use by a member of the general public. A keg would not need a tag attached to it if was being used for on-premise consumption only, being stored, being transported for retail use, or being used by a caterer providing the service.

Commission duties. The Michigan Liquor Control Commission (LCC) would be required to:

** Prescribe the receipt that purchasers would sign. At a minimum, the receipt would have to contain a place for the purchaser's printed name, address, telephone number, and beer keg tag number. The receipt would also have to contain the same information contained in the commission-issued sign described below.

** Supply retailers with a sign stating that a retailer will not return the keg deposit if the tag is not attached; that the individual signing the receipt agrees not to damage the keg or remove or alter the attached tag; and that the individual signing the receipt understands he or she is subject to liability for serving the beer to minors

** Distribute and make identification tags, in numbered lots, available to retailers upon request who sell beer in a keg. The tags would have to be of such size and materials as to make them easily removable to allow for cleaning and reuse of the keg by the keg's owner.

Retailer duties. A retailer would have to:

** Attach an identification tag as prescribed by the commission to a beer keg before or at the time of sale.

** Post a commission-issued sign, described above.

** Require the purchaser to present a driver's license or state ID card and complete and sign a receipt, described above. A keg could not be sold without the required identification.

** Refuse to return a keg deposit if a keg was returned without the identification tag attached. However, the bill would not prohibit a commission agent or a law enforcement agent from returning an untagged keg and receiving the keg deposit on behalf of the LCC or the law enforcement agency.

** Retain a deposit as specified in departmental rules. (Rule 436.1629 of the Administrative Code requires manufacturers, outstate sellers of beer, and wholesalers of beer to collect a barrel deposit of \$30 for a barrel, half-barrel, and quarter-barrel of beer. A cash refund of \$30 for a barrel, half-barrel, and quarter-barrel of beer must be made to a licensee who has made the deposit, and returned barrels for refund.)

** Retain a copy of a receipt for at least 30 days and make the copies available for inspection by the commission and law enforcement agencies.

Penalties. A retailer would be subject to an administrative fine of not more than \$50 for failing to attach an identification tag to a keg, intentionally failing to complete the required receipt, or failing to obtain the purchaser's signature on the receipt.

A person who was not licensed as a retailer or wholesaler by the commission and who removed the attached identification tag, allowed the removal of the tag from a keg he or she had purchased, and/or who provided false information in the purchase of a beer keg would be guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$500, or both. (A maximum term of imprisonment greater than 92 days triggers certain reporting and records retention provisions that include sending the fingerprints to the FBI for a check of the national criminal databases.)

HOUSE COMMITTEE ACTION:

The committee did not amend the Senate-passed version.

FISCAL INFORMATION:

The bill would require the Liquor Control Commission to provide retailers with the receipt forms that retailers would be required to use when selling kegs of beer under the provisions of the bill and with the identification tag that must be affixed to the keg when it is sold. The individual per unit cost of the receipt forms would only be a few cents. The cost of the identification tag would depend on the design features, although, on an individual per unit basis, such costs would likely not be significant. The Liquor Control Commission estimates the total cost of printing and shipping the keg forms and identification tags to be approximately \$7,500 on an annual basis. These costs likely would be borne by the LCC, given that the bill contains no explicit authority allowing the LCC to pass these costs on to retailers when they obtain the forms and identification tags, as needed.¹

¹ Similar keg registration laws have been enacted in 31 other states. In California, for instance, the Department of Alcohol Beverage Control charges retailers \$9.00 for a receipt book containing 50 receipts and \$21 for a keg identification tag packet containing 100 tags. Presumably, these costs represent the department's actual production

The bill also requires the LCC to provide retailers with a notice that notifies consumers concerning the use of a keg. The cost of the notice is estimated by the LCC to be \$4,000 for the signs themselves, and an additional cost of \$5,000 for mailing. These costs could be mitigated in large measure if the notice is available through the LCC's website in a downloadable form, similar to the age sign that must be posted. In all, the total costs for materials would be approximately \$16,000 on an annual basis.

Additionally, the bill would impose an administrative fine of \$50 on retailers who fail to comply with the bill's keg tag requirements. Ostensibly, this penalty would be in addition to other sanctions that may be meted out by the LCC in the course of administering and enforcing state liquor laws (which include license suspension or revocation.) Any revenue generated from the administrative fine would be credited to the General Fund.

The bill would impose additional administrative and enforcement costs on the LCC and local law enforcement agencies to ensure compliance on the part of retailers and consumers. The bill does not, however, provide any additional resources to the LCC or local law enforcement agencies. The activities of the LCC and local law enforcement agencies relating to the enforcement of liquor laws are generally financed through the issuance of retail liquor licenses, where 41.5% of license fee revenue is retained by the LCC for administration and enforcement, and 55% is returned to local governments for enforcement activities. The licensing and enforcement activities of the LCC are partially funded by the Liquor Purchase Revolving Fund. To the extent the bill increases LCC expenditures from the LPRF, it would serve to reduce the LPRF transfer to the General Fund. This reduction is offset, to some degree, if the penalty provisions of the bill result in an increase in revenue credited to the General Fund.

To the extent that misdemeanor convictions increased under the bill, local units of government could incur increased costs of jail incarceration or misdemeanor probation supervision, both of which vary with jurisdiction. Any increase in penal fine revenues could benefit local libraries, which are the constitutionally-designated recipients of those revenues.

ARGUMENTS:

For:

The bill would address the issue of underage drinking by establishing a system of beer keg registration. Currently, there is no statewide system in place to track a particular beer keg to the store from which it was purchased or to identify the purchaser of the keg. This has proven to be a problem in enforcing the state's zero tolerance law on underage drinking and the prohibition on "blind pig" parties, in which alcohol is sold from unlicensed premises.

and shipping costs. Additionally, the Indiana Alcohol and Tobacco Commission charges \$3.25 for a booklet of 50 keg registration labels. The Connecticut Department of Consumer Protection charges \$6.00 for a booklet of 50 labels.

With 160 12-ounce servings in a full keg, these parties, or "keggers", tend to be open (meaning anyone can attend), large, unsupervised events and thus very attractive to minors. The keg is often unattended and partygoers serve themselves, making the beer easily accessible to underage persons. In addition, unlike beer in cans or bottles, which if unopened can be used in the future, the beer in kegs goes flat after a few days, even sooner if not kept properly chilled. Thus, kegs can encourage overconsumption in order not to "waste" the beer.

At least 31 states have enacted some form of keg registration. Under the system created by Senate Bill 470 (or House Bill 4565), a keg would have an ID number attached to it, purchasers would have to present a state ID or driver's license, and the retailer would have to collect a deposit and complete a receipt that would tie a specific keg to the purchaser. The receipt, a copy of which would be given to a purchaser, would also warn of the liability for serving alcohol to minors, already a criminal offense under the liquor laws. Providing misinformation to the retailer or removing (or allowing to be removed) an ID tag from a keg would be a misdemeanor offense. Liquor licensees would be subject to administrative sanctions if they failed to attach a keg ID, obtain the purchaser's signature, or intentionally failed to complete the receipt.

The bill's provisions are expected to increase responsible use of kegs at parties and ease enforcement efforts, which in turn should decrease youth access to keg beer. Problems associated with minors consuming alcohol, for instance, fatal traffic accidents and alcohol poisoning, should be mitigated if the measure is successful in reducing underage drinking.

Against:

The time period for retailers to retain a receipt (30 days) is too short for what is needed in most criminal investigations and civil suits. Most states require record retention for at least six months, with some up to two years.

In addition, many states require liquor licensees to share in the cost of the keg registration program; for example, charging a minor fee for a book of receipts or a package of keg ID tags. If the Liquor Control Commission were authorized to do the same, it could help defray the costs associated with administering the keg ID program. This is important for an agency that has seen its enforcement staff cut almost in half through budget cuts over the past decade.

Against:

The bill may not necessarily result in a decrease in underage drinking. Recent research that analyzed the effectiveness of six different underage drinking laws, including keg registration laws, found a 12 percent increase in fatal traffic accidents involving underage drivers and alcohol consumption in states with keg registration laws. (*The Impact of Underage Drinking Laws on Alcohol-Related Fatal Crashes of Young Drivers, Alcoholism: Clinical and Experimental Research*, Vol. 33, No. 7, July 2009.) This unexpected effect could have resulted from a weakness in the study related to the measures used in the data analysis. However, the authors hypothesize that since the study

did show a decrease of three percent on fatal traffic accidents involving minor drivers "through its effect on beer consumption", keg registration laws "may also promote the substitution of distilled spirits consumption by youths." Or, youths could be bringing their own alcohol to keg parties. Another possibility considered was that keg registration laws are not sufficiently enforced and thus have little positive impact on reducing youth drunk driving fatalities.

Indeed, some colleges and universities that have adopted bans on kegs at campus parties have found that underage attendees "pre-game" instead, meaning that they drink heavily in a short amount of time before going to a kegger. Moreover, keg sales have decreased in some jurisdictions with keg registration laws as party organizers instead choose untraceable forms of alcohol such as spirits or beer in cans and bottles. Regardless, the results show that more research is needed to accurately identify the efforts that really do reduce underage drinking and save lives.

POSITIONS:

A representative of the Associated Food and Petroleum Dealers testified with a neutral position on the bill. (6-9-10)

The Michigan Liquor Control Commission indicated a neutral position on the bill. (6-9-10)

The Michigan Beer and Wine Wholesalers Association indicated a neutral position on the bill. (6-9-10)

The Michigan Food and Beverage Association indicated opposition to the bill. (6-9-10)

The Michigan Business and Professional Association indicated opposition to the bill. (6-9-10)

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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.