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House Bill 4628 (as reported without amendment)

Sponsor: Representative William R. Keith

House Committee: Liquor Control

Senate Committee: Commerce and Technology

Date Completed: 11-5-87

RATIONALE

Public Act 7 of 1986 amended the Michigan Liquor Control Act to require the Liquor Control Commission (LCC) to revoke the license of an off-premises licensee, such as a party store or supermarket, at the request of the local unit of government if the licensee was found guilty of selling alcohol to underage customers on at least three occasions during a single calendar year (although the violations cannot include occasions in which an underage customer used false or fraudulent identification). Under the Act, the local legislative body must request the revocation by resolution. The measure was implemented at the behest of local officials frustrated by difficulties in policing party stores and other outlets who sell alcohol to minors. Local officials complained that they had little success in urging the revocation of violators' licenses. During the debate over Public Act 7, licensees complained that local officials could engage in vendettas against specific businesses while ignoring violations at other outlets, and argued that discretion should be left in the hands of the Liquor Control Commission, which is removed from local squabbles. Licensees continue to make the argument that the provision enacted last year puts too much authority in local hands and continue to fear the arbitrary exercise of that authority.

CONTENT

House Bill 4628 would amend the Michigan Liquor Control Act to alter the options of the Liquor Control Commission (LCC) relative to a local governmental unit's request for sanctions against an off-premises licensee. Under the Act, if a local legislative body requests the revocation of an off-premises license on the ground that the licensee had furnished alcohol to a minor on at least three separate occasions in a calendar year, and the violations did not involve the use of fraudulent identification, the LCC, upon verifying the violations, must revoke the license. Under the bill, in such cases the LCC would be allowed to suspend or revoke the license.

MCL 436.17

FISCAL IMPACT

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

ARGUMENTS**Supporting Argument**

The LCC should have the discretion to determine when and whether to suspend and revoke off-premises licenses and should not have its decisions dictated by resolutions from local units of government. (After all, the LCC issues the licenses, which do not require local approval.) (In contrast,

local units have more influence over on-premises licensees, such as restaurants and bars, because they approve the issuing and renewal of those licenses. Local units have little involvement in the issuance of off-premises licenses.) Merchants fear the arbitrary exercise of power by a local unit, which could selectively target some outlets while ignoring the practices of others. Violations can occur despite the best intentions of store owners, particularly when employees are inexperienced, careless, or irresponsible (and when police launch "sting" operations). Underage customers are persistent and have little to lose. Perhaps communities should have some influence on licensing, but they should not be able to take licenses away single-handedly. The loss of a license by a party store, for example, is no small matter. It can mean the loss of a family's livelihood. The LCC, removed from local conflicts, can determine best when such drastic action is necessary and when lesser measures can be taken to address problems at a liquor outlet.

Response: It is unfair to claim that local officials will abuse their authority and engage in vendettas. When local officials take action against irresponsible licensees, it is because of pressure from citizens who are angry at stores that are selling alcohol to their children. The license revocation process established by Public Act 7 requires two steps: 1) a licensee must have three confirmed violations of selling to underage customers in one year, which requires involvement by the LCC; and 2) the local legislative body must, by resolution, request the license revocation. This is not a process that is easy to abuse; it requires the participation of more than just one disgruntled local official. (No one, it should be pointed out, has yet lost a license as a result of this new law, which was only passed last year.)

Supporting Argument

There is an apparent conflict in law as a result of two separate provisions enacted in 1986. Public Act 7, the focus of this bill, requires revocation of an off-premises license when a licensee has served minors on three separate occasions in one calendar year. A later Act, Public Act 176, of 1986 which addressed liquor liability insurance issues (by amending the dramshop Act), requires the LCC to suspend or revoke any retail license if the licensee commits three separate violations in a 24-month period involving the sale of liquor to a minor or to a visibly intoxicated person of any age. Any three violations in a 12-month period (as under Public Act 7), obviously would occur in a 24-month period (as in the dramshop Act) as well. This means the LCC could, using the dramshop provision, suspend a license following a hearing on the merits of a case and subsequently receive a resolution from the local

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community requesting revocation and be required, under Public Act 7, to revoke the license. Thus, the two provisions together could lead to unequal treatment of similar cases and to lawsuits, and might even constitute "double jeopardy". There should be some consistency about the jurisdiction and discretion of the LCC. The bill would allow the option of merely upholding the suspension for the dramshop Act violation.

Response: It is true that the process established by Public Act 7 only allows the LCC to revoke a license, and perhaps more flexibility should be permitted. Local government representatives have said they would support the LCC's being given the option either to revoke or to suspend a license in such cases, but would not support allowing the LCC to take no action whatsoever. If that were the case, the local unit's resolution would count for nothing and the provision would be meaningless, since a local unit does not need the liquor law to authorize the passing of nonbinding resolutions.

Opposing Argument

Underage drinking is a serious social problem, and the public increasingly supports tough enforcement and stiff penalties to help reduce the physical and emotional harm that results from the irresponsible uses of alcohol. The prevention of drunk driving, underage drinking, and other alcohol-related ills should be a high priority. It would be a mistake to make it easier or less perilous for licensees to sell alcohol illegally to underage customers. The Act should be left as is: licenses should be revoked.

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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.