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LAW ENFORCEMENT OFFICIALS: ALLOW LIQUOR LICENSES

House Bill 4916 (Substitute H-1) First Analysis (11-4-97)

Sponsor: Rep. Kirk Profit
Committee: Regulatory Affairs

THE APPARENT PROBLEM:

The Michigan Liquor Control Act prohibits certain people (and exempts others) who hold, or whose spouses hold, public offices that involve the duty to enforce any of the federal, state, or local penal laws from having a direct or indirect interest in a liquor license or from being issued an on- or off-premise liquor license. Civil defense volunteer police, township supervisors, mayors or city council members, village presidents, mayors of home rule cities, and the state treasurer when acting in the capacity of custodian of assets of state retirement systems are exempted from the prohibition and so may obtain liquor licenses for on- or off-premise liquor sales. Those prohibited from being issued a liquor license include police officers, state troopers, sheriffs and their deputies, judges, prosecuting attorneys, and certain state officers such as the director of the Department of State Police. This statute, part of the original act created in 1933 following Prohibition, was seen as a way to prevent conflicts of interest between those who distribute liquor and those who enforce liquor laws and oversee and regulate liquor distribution.

Some people feel, however, that such laws are antiquated and no longer suited for the 1990s. Still others believe that laws should not legislate how people can and cannot earn money, and see the prohibition as restricting how someone can make a living. For example, a situation arose recently in which a township attorney had to resign his position so that a country club that he had invested in could obtain a liquor license. In other situations, persons under the license prohibition have not been able to marry people who are licensees, even if the licensed establishment is located in a different jurisdiction. Legislation has been proposed to open eligibility for liquor licenses to those previously disqualified if the establishment was outside of the local unit of government where a law enforcement or other elected official enforced local or state penal laws.

THE CONTENT OF THE BILL:

The bill would amend the Liquor Control Act to specify that a person who held, or whose spouse held, a public

office that involved the duty to enforce any federal or state penal laws or local ordinances and resolutions could be issued a liquor license as long as the licensed activity did not occur in the same local unit of government within which the person enforced the state or local penal laws. The bill would also add township attorneys not engaged in enforcement of the act to the list of officials previously allowed to have a liquor license, which in effect would permit a township attorney (along with the other officials listed in the exemption provision) to have a liquor license for an establishment that was located either within or outside of the municipality where he or she had jurisdiction to enforce state and local laws.

MCL 436.18

BACKGROUND INFORMATION:

The Michigan Liquor Control Act, which was established in 1933, has been amended several times since 1937 to add exemptions from the ban against public officials who enforce criminal laws from having liquor licenses. A number of attorney general opinions through the years have further interpreted which public officials can and cannot be eligible for licenses. Some earlier opinions on who is eligible for liquor licenses have been contradicted by later opinions, but it would appear that the attorney general opinions have held that a township supervisor, alderman, member of a county board of supervisors, and a municipal legislative official made a peace officer by statute in dealing with riots all can hold liquor licenses; a coroner, probate judge, special policeman, and special deputy sheriffs are public officials and so are barred from having a liquor license.

Currently, two Senate bills have been reported from committee and are waiting action on the Senate floor. Senate Bill 636 is identical to House Bill 4916 except that it does not include the provision pertaining to township attorneys (township attorneys could still obtain a liquor license but only outside of their jurisdictions). Senate Bill 682 would also allow public officials and

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their spouses to have liquor licenses for establishments outside

their jurisdictions. However, the bill would also permit a law enforcement official to marry a liquor licensee within his or her jurisdiction if the licensee had had the liquor license for at least three years before the marriage. Further, under that bill, the Liquor Control Commission could periodically review the circumstances of those meeting that exception and could monitor and review any complaints regarding inappropriate enforcement of the act by or against a person meeting the exception.

FISCAL IMPLICATIONS:

The House Fiscal Agency reports that the bill would have no fiscal impact on state or local government. (10-23-97)

ARGUMENTS:

For:

The ban on public officials who enforce criminal laws from holding liquor licenses dates back to Prohibition times, but is no longer valid for the 1990s. Laws should not legislate how people can make a living. And, since most couples today are two-income families, situations have arisen in which couples cannot marry because one has a liquor license and the other is a law enforcement official covered by the act's ban. Further, the situation that existed in Prohibition days with organized crime and liquor no longer exists. Therefore, it is time to rethink the state's policy of prohibiting certain people or their spouses from holding liquor licenses.

Indeed, many states do not legislate who or what groups can and cannot have liquor licenses, but leave the establishment of parameters for licensing up to state regulatory agencies. In fact, many states even allow municipalities to decide eligibility criteria for their own jurisdictions. Similar legislation has been introduced in Colorado, which has a similar ban on law enforcement personnel holding liquor licenses.

The bill represents a compromise between outright repeal of the ban and keeping the ban. Those enforcing criminal laws, or their spouses, could have liquor licenses but only for establishments outside of their areas of jurisdiction. Those currently exempted from the ban could have licensed establishments either within or outside of their jurisdiction as they do now. The bill is a good start to update an antiquated law and yet maintain some protection from possible conflicts of interest between licensees and those entrusted to uphold liquor enforcement.

For:

Several situations have risen lately in which township attorneys have been asked to resign their position with the township because of business investments that involved liquor licenses. Enforcement of the liquor laws is a very small part of a township attorney's duty, and the bill's requirement that township attorneys not engage in enforcement of the act should ensure that no conflict of interest would exist.

Against:

The bill represents a fundamental shift in public policy in regards to the separation of those who enforce liquor laws from those who sell and distribute liquor. Part of the reason that the situation today in Michigan is different from Prohibition days is because Michigan enacted, and subsequently upheld, very stringent regulations over all aspects of the liquor industry. To allow those entrusted with the enforcement of criminal law, which includes liquor violations, to also have liquor licenses, would invite potentially serious conflicts of interests. It is not unreasonable to expect those individuals in positions of protecting the state's residents to make some sacrifices in order to prevent such conflicts of interest or other improprieties from ensuing. Many feel that in light of the long-established brotherhood and intense loyalty that exists among certain members of the law enforcement profession, it would be very difficult for members of one profession to objectively investigate and prosecute violators of the same profession. Even though the bill would only allow a license for an establishment outside of a person's jurisdiction, loyalties can and do extend beyond geographical boundaries. Also, some feel that since township attorneys are involved in decisions as to zoning and granting of liquor licenses, they should not be included in the exemption that would allow them to have licenses in their own townships.

Further, the bill raises many questions as to its enforceability. For instance, it is unclear at this time how the change in law would affect some in law enforcement, such as state troopers, who technically have statewide jurisdiction but also have a jurisdiction tied to their post assignment. Also, judges sometimes are assigned to cover other areas for various reasons, troopers and other police officers often transfer or are reassigned, and so on. It could be very problematic for the Liquor Control Commission and local and state governments hiring, electing, and appointing law enforcement personnel to keep track of liquor licenses held by such people and their spouses to avoid violating the law. The ban on law enforcement officials and their spouses from holding liquor licenses has worked well for decades, and just because it is inconvenient for a few, the protection it affords to the many should not be sacrificed.

POSITIONS:

The Michigan Sheriffs Association supports the bill. (11-3-97)

The Michigan Liquor Control Commission has no formal position on the bill. (10-31-97)

The Michigan Licensed Beverage Association has expressed concerns regarding conflict of interest issues but has no formal position at this time. (11-4-97)

The Michigan Interfaith Council on Alcohol Problems (MICAP) opposes the bill. (11-3-97)

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.