Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

SFA BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

Senate Bill 891 (Substitute S-2 as passed by the Senate)
Sponsor: Senator Mike Rogers
Committee: Economic Development, International Trade and Regulatory Affairs

Date Completed: 3-20-98

RATIONALE

The Michigan Liquor Control Act designates the Liquor Control Commission (LCC) the exclusive authority to control and regulate the manufacture, importation, possession (licensure), transportation, and sale of alcoholic beverages and other alcoholic liquors within the State. The LCC's authority, however, does not prohibit local governmental units from regulating local liquor traffic and prohibiting topless activity in licensed liquor establishments within their communities. Recently, there has been some concern about a situation in which the LCC granted a general entertainment permit to a liquor establishment and the establishment discontinued its business and reopened as a topless bar under the same general entertainment permit. (See **BACKGROUND**, below, for a description of the LCC's entertainment permit rule and a similar court case.) Some people feel that certain types of entertainment, such as topless activity, should require a separate entertainment permit to help communities stay aware and maintain control of establishments that offer topless activity in the area.

CONTENT

The bill would amend the Michigan Liquor Control Act to prohibit an on-premises licensee from doing the following: allowing monologues, dialogues, motion pictures, still slides, closed circuit television, contests, or other performances for public viewing on the licensed premises unless the licensee had applied for an entertainment permit and been granted one by the LCC; allowing dancing by customers unless the licensee had applied for and been granted a dance permit (which would not allow "topless activity"); allowing topless activity by customers or employees, or both, on the licensed premises unless the licensee had applied for and been granted a topless activity permit; or allowing the activities that were allowed under a permit at times other than the legal hours for sale and consumption of alcoholic liquor. The performance or playing of an orchestra, piano, other types of musical instruments, or singing, or any publicly broadcast television transmission from a Federally licensed station, however, would be allowed under the bill without a permit.

For an on-premises licensee who was granted an entertainment or dance permit under the Michigan Administrative Code (R 436.1407) and, after January 1, 1998, had extended the activities to include regular or full-time topless activity, the licensee would have to apply to the Commission for a topless activity permit within 60 days after the bill's effective date to continue the topless activity. The bill, however, would not change the fees, renewal, or application process for a permit.

Before a permit was issued under the bill, an on-premises licensee would have to obtain the approval of the Commission, the local legislative body (except in cities with a population of at least 1 million), and the chief law enforcement officer of the jurisdiction containing the premises or the entity contractually designated to enforce the law in that jurisdiction.

"Topless activity" would include, but not be limited to, entertainment or work-related activity that was performed on the licensed premises in which the human breast area including the nipple or more than half the area of the breast was directly exposed or exposed by see-through clothing or a body stocking by the following persons: a licensee; an employee, agent, or contractor of the licensee; or a person who was acting under the control of or with the permission of the licensee.

Proposed MCL 436.26d

Legislative Analyst: N. Nagata

BACKGROUND

Court of Appeals Decision

A situation in Clinton Township led to a Michigan Court of Appeals decision in July 1997. In *Jott, Inc*. v *Charter Township of Clinton* (224 Mich App 513),

the LCC had approved an entertainment permit in 1984 for a bar, which stated it would offer only "wholesome entertainment" and would not offer "any entertainment of a lewd, obscene, or immoral nature including, but not limited to topless performers". In 1992, however, the bar (which was in an industrial zoning district) decided to offer topless dancing but was prohibited from doing so by zoning ordinance 260 (which restricted certain "adult uses" to general business use zoning districts) and local ordinance 291-A (which prohibited "nudity", including topless entertainment, in liquor-licensed establishments).

The Court of Appeals stated, "The use of zoning and licensing ordinances to regulate exhibitions of 'adult entertainment' is widely recognized." The court affirmed the trial court's decision upholding the constitutionality of zoning ordinance 260, and reversed the trial court's decision that local ordinance 291-A was unconstitutional because the definition of "public nudity" was overbroad. The Court of Appeals specified that zoning ordinance 260 was constitutional because it did not prohibit topless dancing but, "merely restricts the location of such forms of adult entertainment...to combat the secondary effects of adult uses on surrounding areas 'in order to insure that the surrounding areas will not experience deleterious blighting, or downgrading influences.'" The Court of Appeals severed the overbroad provisions in local ordinance 291-A and upheld the remainder. The Court stated that the ordinance was constitutional because it did not forbid *all* public nudity, just public nudity in establishments that serve liquor. The Court pointed out that the LCC's regulations explicitly recognize the authority of local governmental units to prohibit nudity, other than "bottomless nudity" (which is prohibited in all liquor-licensed establishments by LCC rule), in liquor-licensed establishments.

Entertainment Permits

Under R 436.1407 of the Michigan Administrative Code, an on-premises licensee must obtain an entertainment or dance-entertainment permit from the LCC before allowing dancing, monologues, dialogues, motion pictures, still slides, closed circuit television, contests, or other performances for public viewing on the licensed premises. This rule does not prohibit orchestra playing, piano playing, the playing of other musical instruments, or singing, and does not apply to any publicly broadcast television transmission from a Federally licensed station.

An on-premises licensee also must obtain a dance or dance-entertainment permit before allowing dancing by customers or by customers and employees on the licensed premises. A licensee may not allow the activities permitted by a dance permit, entertainment permit, or dance-entertainment permit at times other than the legal hours for the sale and consumption of liquor.

Before a permit is issued, the licensee must obtain the approval of the chief local law enforcement officer, the local legislative body (except in a city with a population of 1 million or more), and the LCC.

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 bill would require liquor-licensed establishments to obtain a specific entertainment permit for certain activities, including a dance permit and topless activity permit. The language of the bill closely parallels the LCC's existing administrative rule for dance and entertainment permits, but also would specifically require a separate permit for topless activity. Liquor-licensed establishments that currently hold a entertainment permit but had extended the activities to include regular or full-time topless activity after January 1, 1998, would have to apply to the Commission for a topless activity permit to continue the topless activity. The bill would allow communities to regulate and restrict adult entertainment establishments without violating any constitutional rights. The bill also would help prevent these establishments from abruptly opening in close proximity to schools, churches, and residential neighborhoods.

Response: Community groups should constantly be aware of and alert to changes in the types of entertainment offered by establishments within their neighborhood. Most local units of government already should be able to prohibit certain types of entertainment, such as topless activity, in liquor-licensed establishments by enacting local ordinances.

Legislative Analyst: N. Nagata

FISCAL IMPACT

This bill would create a retroactive permit process for any on-premise licensee that had added topless

activity entertainment since January 1, 1998. There is currently a $70 inspection fee that is required of licensees that apply for any type of permit change. According to the Liquor Control Commission, this bill could have a fiscal impact by increasing inspection revenues, depending on the number of establishments that have added this type of entertainment during the specified time period.

Fiscal Analyst: M. Tyszkiewicz

A9798\S891A