

Legislative Analysis



PROHIBITION AGAINST LIQUOR LICENSE: ALLOW NEW EXCEPTION FOR CERTAIN POLICE

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House Bill 4732 (Substitute H-2)
Sponsor: Rep. Virgil Smith
Committee: Regulatory Reform

First Analysis (7-11-07)

BRIEF SUMMARY: The bill would allow a spouse of a law enforcement officer to obtain an on-premises liquor license under certain circumstances.

FISCAL IMPACT: There is no fiscal impact on the State of Michigan or its local units of government.

THE APPARENT PROBLEM:

In general, the state liquor laws prohibit an elected or appointed public official, and the spouse of the official, from obtaining a license to sell alcohol if the official's duties involve enforcing federal, state, or local penal laws or ordinances. Those specifically 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 provision, part of the original liquor 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 exceptions are provided. For example, a spouse of an appointed or elected official holding an office that involves the duty to enforce a penal law or ordinance can have a liquor license if the spouse held the liquor license (or an interest in a liquor license) for at least three years prior to marrying the official.

Another exception is being sought at a constituent's request. The constituent in question has operated a nightclub in Detroit for several years. Apparently, the liquor license for the establishment is held by the landlord of the building. The constituent has the opportunity to buy the facility and apply for transfer of the liquor license, but is prohibited under the liquor code because his wife is a Detroit police officer. Because she is assigned to the Internal Affairs Department, she does not, in the regular performance of her duties, enforce the state's liquor laws. Legislation has been offered that would allow a narrow exception to the current prohibition to address this situation.

THE CONTENT OF THE BILL:

The bill would amend the Michigan Liquor Control Code to add an exception regarding the spouse of a law enforcement officer. Under the bill, the spouse of a law enforcement

official employed in the city within which the licensed premises was located, could apply for transfer of ownership of an existing on-premises liquor license (i.e., Class C, which includes spirits, or tavern license for beer and wine), if all of the following criteria were met:

- The spouse who is a law enforcement officer is not involved directly or indirectly in the enforcement of liquor laws.
- The city in which the licensed premises are located is at least 10 square miles in area and has a population of 500,000 or more (i.e., Detroit).
- The current holder of the license has not violated the liquor code for at least one year prior to submitting the application to transfer ownership of the liquor license.

MCL 436.1523

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. (The act was recodified in 1998 with only a few substantive changes and renamed the Michigan Liquor Control Code.) A number of attorney general opinions through the years have further interpreted which public officials are and are not 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 probate judge, special policeman, and special deputy sheriffs are public officials and so are barred from having a liquor license.

ARGUMENTS:

For:

The bill would preserve the general ban on law enforcement officers or their spouses holding a liquor license, but would allow a spouse to obtain a liquor license under a narrow set of criteria. The bill would only pertain to cases that involved the transfer of a liquor license (not a new or escrowed license), the licensed establishment would have to be in Detroit (the only Michigan city with over 500,000 population), the spouse who was a law enforcement officer would have to be employed in the City of Detroit and could not be in a position to enforce the liquor laws in the performance of his or her duties, and the current licensee could not have had a liquor violation during the previous year.

The ban on spouses of law enforcement officials who enforce criminal laws from holding liquor licenses dates back to the repeal of Prohibition, but is no longer valid for the 21st Century. The situation that existed in Prohibition days with organized crime and liquor no longer exists. And, since most couples today are two-income families, situations now

arise in which one spouse must turn down business opportunities because the other is a police officer. Laws should not legislate how people can make a living.

Further, the spouse of the person currently seeking a change in the law works for the Internal Affairs division and does not, as part of her regular duties, enforce the liquor laws. In addition, Detroit is so large that it is unlikely that officers she knows would be sent to investigate possible liquor violations at her husband's establishment. Therefore, there should be no conflict of interest issues.

Against:

Enactment of the bill would be bad public policy for the following reasons:

- * The bill represents a fundamental shift in public policy in regards to the separation of those who enforce liquor laws from those who sell liquor. The ban on law enforcement officers and spouses from holding liquor licenses has worked well for decades, and just because it is inconvenient for one person, or even a few, the protection it affords to the many should not be sacrificed. The bill would erode the level of protection that the liquor laws currently afford the public. Allowing spouses of those entrusted with the enforcement of criminal law to have liquor licenses invites potentially serious conflicts of interests.

- * The bill attempts to ameliorate this conflict by applying its exemption only to those spouses of Detroit law enforcement officers "not involved directly or indirectly in the enforcement of liquor laws." However, every peace officer or law enforcement officer of this state or a county, township, city, village, state university, or community college has a statutory duty to enforce the Michigan Liquor Control Code and the commission rules in his or her respective jurisdiction (MCL 436.1201). (An officer who willfully neglects or refuses to perform this duty is guilty of a misdemeanor and faces a mandatory penalty of a fine up to \$500 or imprisonment in the county jail for a maximum of 90 days, or both.)

- * Even if some law enforcement officers were deemed to have no involvement in enforcing the liquor code, the Liquor Control Commission (LCC) would have no way to effectively monitor future changes in work assignments. If the LCC determined that an officer's new assignment did actively involve enforcing the liquor code, would the licensee then be forced to sell his or her interest in the license or would the LCC be required to revoke the liquor license?

- * Since the licensed premises would be in the same jurisdiction where the spouse-officer worked, the intense loyalty between colleagues exhibited in law enforcement would make it difficult for some officers to "bust" the spouse of a fellow officer. For that reason, the LCC has stated concern that details of a proposed decoy operation, often used to identify establishments that sell or furnish alcohol to minors, could be leaked to the officer-spouse of the licensee. Furthermore, the hesitancy to cite the spouse of an officer may be increased if the officer-spouse is high ranking in the department or, as in the current case, is assigned to Internal Affairs – a bureau or division within police agencies with authority to investigate other police officers and who are in a greater position to influence the behavior of police officers (i.e., officers may be leery of writing tickets for liquor violations for fear of retaliatory investigations by members of Internal Affairs).

POSITIONS:

The Michigan Liquor Control Commission opposes the bill. (5-29-07)

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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.