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Senate Bill 56 (as passed by the Senate)
Sponsor: Senator John Pappageorge
Committee: Economic Development and Regulatory Reform

Date Completed: 8-14-07

RATIONALE

When the holder of an on-premises liquor license, such as a restaurant, provides catering services for an event held off of the licensed premises, the licensee may not sell to the catering client because its license is limited to the sale of liquor for on-premises consumption. The licensee may be able to sell packaged beer and wine (but not spirits) to the client, only if it also holds a specially designated merchant (SDM) license, which allows the sale of beer and wine for off-premises consumption. If a person who hosts a catered event wishes to serve spirits to his or her guests, he or she must purchase the liquor from a business that holds a specially designated distributor (SDD) license, which allows the sale of liquor for off-premises consumption. To address this situation, some people believe that the Michigan Liquor Control Code should allow an on-premises licensee to obtain a permit to sell packaged beer, wine, and liquor to a person who contracts for catering services, and require the caterer to serve the alcohol at the catered event.

CONTENT

The bill would amend the Michigan Liquor Control Code to create a catering permit and allow the Liquor Control Commission to issue a catering permit to a public on-premises licensee, as a supplement to the on-premises license, allowing the sale and delivery of beer, wine, and spirits in the original sealed container at locations other than the licensed premises, and requiring the permit holder to provide for service of beer, wine, and spirits at a private event where the alcoholic liquor was not resold to guests. The Commission

could not issue a catering permit to an applicant whose food service establishment delivered beer, wine, and spirits but did not serve the beer, wine, and spirits.

An applicant for a catering permit would have to apply on a form approved by the Commission and pay an application and processing fee of \$70 and a catering permit fee of \$300 at the time of issuance. The licensee also would have to pay the catering permit fee at the time of renewing the on-premises license.

Spirits sold by an on-premises licensee under a catering permit could not be sold at less than the minimum retail price fixed by the Commission and pursuant to rules promulgated by the Commission for specially designated distributors. (An SDD is a person engaged in an established business licensed by the Commission to distribute spirits and mixed spirit drink in the original package for off-premises consumption.)

The bill states that it would not limit the number of catering permits the Commission could issue within any local unit of government. A holder would not be prevented from using the catering permit at multiple locations and events during the same time period.

An on-premises licensee who also was the holder of a catering permit would not be prohibited from selling beer, wine, and spirits to a person who had obtained a special license under Section 527 (which allows the issuance of special licenses to nonprofit charitable organizations for the sale, at auction, of donated wine).

A holder of a catering permit would be subject to all sanctions, liabilities, and penalties provided under the Code or under law.

The bill would define "catering permit" as a permit issued by the Commission to a public on-premises licensee who is licensed for the sale of beer, wine, and spirits and also is licensed as a food service establishment under the Food Law, that enables the holder to sell and deliver beer, wine, and spirits in the original sealed container to a person for off-premises consumption so long as the sale is not by the glass or drink, and requires the permit holder to provide the service of the beer, wine, and spirits. Issuance of the permit would not allow the permit holder to deliver beer, wine, and spirits but not serve the beer, wine, and spirits.

"Private event" would mean an event where no consideration, as defined in Section 913(5), is paid by the guests. (Section 913(5) defines "consideration" as any fee, cover charge, ticket purchase, the storage of alcoholic liquor, the sale of food, ice, mixers, or other liquids used with alcoholic liquor drinks, or the purchasing of any service and/or item; or the furnishing of glassware or other containers for use in the consumption of alcoholic liquor in conjunction with the sale of food.)

Proposed MCL 436.1545

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

When a person contracts for catering services from a restaurant that serves beer, wine, and liquor under a Class C license, he or she reasonably may expect to receive full food and beverage service from the caterer. Since the restaurant's liquor license allows the sale of beer, wine, and liquor only for on-premises consumption, however, the caterer may not provide that beverage service for an off-premises catered event. Although an on-premises licensee that also holds an SDM license may sell beer and wine in its original sealed container to a catering customer, the licensee is prohibited from providing spirits at a catered event. Also, an

on-premises licensee that does not also hold an SDM license may not even provide beer and wine as part of its catering services. Consequently, if a catering customer wishes to provide alcoholic beverages at his or her event, the customer must purchase the liquor from a retail store licensed to sell those beverages for off-premises consumption and transport the beverages to the catered event.

The bill would accommodate catering customers by authorizing the Liquor Control Commission (LCC) to issue a catering permit to an on-premises licensee that provided off-premises catering services. Under the bill, it would be much more convenient for a catering customer to provide full beverage service to his or her guests, because he or she could purchase liquor, beer, and wine directly from the caterer and have the caterer transport and serve the beverages.

Opposing Argument

The bill would adversely affect many small businesses that rely on off-premises liquor sales for a significant portion of their revenue. Reportedly, almost 20% of the business conducted by some of these licensees is generated from supplying spirits for private events, such as weddings, graduation parties, charitable fund-raisers, and bar mitzvahs. In addition, on-premises licensees may purchase liquor at a rate lower than that paid by stores holding an off-premises license, and the price at which on-premises licensees sell the liquor is not regulated as it is with off-premises licensees. Authorizing a caterer to sell, deliver, and serve liquor actually could result in a hardship to its customers because they might have to pay more for the liquor than they would from a liquor store. The State should not change a liquor distribution system that has been working well for many years, especially if it would harm small businesses.

Response: The bill would not require a catering customer to purchase alcoholic beverages from the caterer, but merely would provide that option if the caterer held an on-premises liquor license for a food establishment and a catering permit. Consumers could continue to purchase alcoholic beverages from their local retailer if that were advantageous to them. Also, the bill would prohibit a catering permit holder from selling drinks by the glass, as it would at its on-premises location, and would

require the caterer to sell the alcohol in its original sealed container. In addition, a caterer could not sell spirits for less than the minimum retail price set by the LCC for SDD licensees. Consequently, a caterer would have no economic advantage over an off-premises retailer.

Opposing Argument

Providing catering permits could increase significantly the number of liquor licenses issued and the locations at which alcohol is served. This could conflict with the State's liquor regulations because local liquor license quotas would not apply and an on-premises licensee in one municipality could use its catering permit to sell and serve alcohol at catered events in other municipalities at locations unknown to regulators and law enforcement agencies. Indeed, the bill is identical to one that Governor Granholm vetoed in September 2006 (Enrolled Senate Bill 50 of 2005-2006). In her veto message, the Governor suggested that "ambiguities in the legislation unintentionally may result in the creation of new loopholes in Michigan law regulating the distribution and sale of alcoholic beverages". Specifically, the Governor indicated that the bill would authorize an unlimited number of catering permits without specific limits on the duration of those permits. The Governor also expressed concern about the bill's failure to address enforcement challenges that would arise under a new distribution mechanism for alcoholic drinks at catered events, including preventing drinking by minors.

Response: The bill would not increase the number of licenses issued in any municipality but would merely authorize the LCC to issue a catering permit as a supplement to an existing on-premises license for a licensee that also offered off-premises catering services. A holder of a catering permit would be subject to all laws and regulations pertaining to the sale and serving of alcoholic beverages. Also, the bill actually could reduce the likelihood of underage and excessive drinking at private parties because a catering permit holder would have to serve the alcohol, while current law does not address who may or must serve alcohol at private events. A liquor licensee and its employees are likely to be trained to seek age verification and to detect overindulgence. Also, a licensee has liability exposure under the dramshop Act

and would be unlikely to risk civil action by serving minors at a private event.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill would create a new catering permit for on-premises licensees. The application fee would be \$70 and the permit fee would be \$300. If 300 licensees, for example, used this new permit category, the amount of revenue generated would be \$121,000. These funds would be deposited directly into the General Fund.

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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.