

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 636 (Substitute S-1 as passed by the Senate)
Senate Bill 682 (Substitute S-3 as passed by the Senate)
Sponsor: Senator John J.H. Schwarz, M.D. (Senate Bill 636)
Senator Dianne Byrum (Senate Bill 682)
Committee: Economic Development, International Trade and Regulatory Affairs

Date Completed: 11-4-97

RATIONALE

Under the Michigan Liquor Control Act, if a person or his or her spouse holds a public office that involves the enforcement of Federal, State, or local penal laws, the person is prohibited from obtaining or having an interest in a liquor license. While the prohibition does not extend to volunteer police, mayors, city council members, or village presidents, it otherwise applies to law enforcement personnel, elected or appointed officeholders, and their spouses. This prohibition evidently has created problems in situations involving an attorney who holds an interest in a golf course that has a liquor license, as well as a police officer and a liquor licensee who wish to get married.

In the first situation, an attorney had been hired to represent the Township of Leroy and the Village of Tekonsha, in the southwestern and southern parts of Calhoun County, respectively. The attorney, however, holds an ownership interest in a golf course in Convis Township, which is at the northern end of the county. Apparently, the attorney had to resign his employment with Leroy Township and Tekonsha before the Liquor Control Commission would issue a liquor license to the golf course.

The second situation involves a city's chief of police and a woman who owns a Westside Deli that has a liquor license. The couple wishes to get married but cannot do so unless the police chief resigns from his position or the deli owner sells her business, due to the prohibition in the Liquor Control Act.

Reportedly, these types of situations are not uncommon. It has been suggested that exceptions to the statutory prohibition should be made in order to accommodate individuals' career choices and personal relationships.

CONTENT

Senate Bills 636 (S-1) and 682 (S-3) would amend the Michigan Liquor Control Act to allow a law enforcement officer or public officeholder to obtain or have an interest in a liquor license under certain circumstances. Senate Bill 682 (S-3) also would allow the spouse of such a person to obtain or have an interest in a liquor license if certain conditions were met.

Specifically, the bills provide that a person who held or whose spouse held, by appointment or election, a public office involving the duty to enforce Federal, State, or local penal laws or ordinances, could not obtain a liquor license, or have a direct or indirect interest in a liquor license, if the activity regulated by the license would occur in the same local unit of government within which the person enforced State or local penal laws.

In addition, under Senate Bill 682 (S-3), the prohibition would not apply to the spouse of a law enforcement officer or public officeholder if the spouse held a license or an interest in a license for at least three years before marrying the official. The prohibition also would not apply to a spouse who had voting rights in a public or private club holding a liquor license, which rights were derived from ownership of shares to the club, and the spouse participated as a member in good standing of the club or of an advisory board but did not participate in the club's day-to-day operation.

Senate Bill 682 (S-3) further provides that in the case of any licensee excepted from the Act's general prohibition, the Liquor Control Commission could periodically review all circumstances of the licensee and his or her spouse regarding the exception. The Commission also could review and monitor any complaints it received regarding inappropriate enforcement of the Act by or against

a person excepted from the prohibition.

MCL 436.18

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 Liquor Control Act's restriction on who may obtain a liquor license is inflexible and overly broad. This Prohibition-era restriction, which assumes an inherent conflict of interest, also is outdated. Arguably, a law enforcement officer or public officeholder might not be able to enforce objectively the liquor laws in regard to an establishment in which he or she has an interest. This does not apply, however, if the establishment is located outside the official's jurisdiction. In regard to the example involving the attorney who holds an interest in a golf course, the golf course is virtually at the opposite end of the county from the municipalities that had retained the attorney. Moreover, the current prohibition still would apply even if the golf course were at the opposite end of the State. If public officials were allowed to obtain a liquor license for an establishment outside of their jurisdiction, the Act's prohibition still would apply to those situations in which a conflict of interest actually could exist.

Supporting Argument

The current law unduly interferes with the ability of public officials and liquor licensees to get married. While it might be reasonable to assume, for example, that a police officer would have difficulty raiding a bar owned by his or her spouse, the same concern could apply to other types of spouse-owned establishments or, for that matter, to establishments owned by other family members. Police officers and public officials do have codes of ethics and can take steps to remove themselves from official action that would create a conflict of interest. In the example involving the chief of police and the Westside Deli owner, the police chief informed the county sheriff of his relationship several years ago, in order to ensure that the sheriff's department could take over an investigation if the situation required it. Furthermore, allowing a public official to marry a liquor licensee could result in greater scrutiny by the Liquor Control Commission (LCC) since the relationship otherwise will continue but without enhanced LCC oversight.

Supporting Argument

While the bill would create exceptions to the general prohibition against public officials' obtaining a liquor license, or being married to a licensee, it also would create protections by specifying that the LCC could periodically review all circumstances of the licensee and his or her spouse regarding an exception. To safeguard against actual or perceived conflicts of interest, the bill would make it clear that the Commission could review and monitor any complaints about inappropriate enforcement by or against a person excepted from the general prohibition. This should address concerns about the potential for preferential treatment toward an official's or spouse's establishment.

Legislative Analyst: S. Lowe

FISCAL IMPACT

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

Fiscal Analyst: M. Tyszkiewicz

A9798\S636A

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.