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BILL ANALYSIS

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Senate Bill 186 (Substitute S-2 as passed by the Senate)
Sponsor: Senator John Pappageorge
Committee: Economic Development and Regulatory Reform

Date Completed: 6-23-09

RATIONALE

Generally, 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 alcoholic beverages 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, but 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.

In addition, under amendments to the Michigan Liquor Control Code enacted by Public Act 474 of 2008 (which took effect on March 31, 2009), a retailer holding an SDM license, a brewpub, a microbrewer, or an out-of-State entity holding a substantially equivalent license, may deliver beer and wine (but not spirits) to the home or other designated location of a consumer in Michigan if certain conditions are met. Under this provision, the licensee or its employee also may serve the alcohol, but only if he or she received alcohol server training through a program approved by the Liquor Control Commission (LCC).

To address this situation, some people believe that the Code should provide for a permit that would allow an on-premises licensee to sell packaged spirits to a person who contracts for catering services, if the

caterer served 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 or the holder of another state's substantially equivalent license, as a supplement to the on-premises license, allowing the sale and delivery of spirits in the original sealed container at locations other than the licensed premises, and requiring the permit holder to provide for service of the spirits at a private event where the liquor was not resold to guests. The Commission could not issue a catering permit to an applicant whose food service establishment delivered spirits but did not serve the 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 LCC 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 person delivering the spirits would have to verify that the person accepting delivery was at least 21 years of age.

A catering permit holder could use a third party that provided delivery services to island municipalities that were inaccessible by motor vehicle to deliver spirits as long as the delivery service were approved by the LCC and agreed to verify that the recipient was at least 21.

A catering permit holder providing service of spirits, or an employee of the permit holder, would be required to have completed successfully an LCC-approved service training program. While delivering spirits, a catering permit holder, or its employee, would have to possess documentation that the spirits were being delivered for a private event pursuant to the bill.

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

A catering permit holder who sold and delivered spirits in violation of the Code's sale and distribution requirements would be liable for an administrative fine of up to \$1,000.

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.

A holder of a catering permit would not be prohibited from selling 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).

The bill would define "catering permit" as a permit issued by the Commission to a holder of a public on-premises license for the sale of spirits, or the holder of another state's substantially equivalent license, also licensed as a food service establishment

under the Food Law, that enables the holder to sell and deliver 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 spirits. Issuance of the permit would not allow the permit holder to deliver but not serve 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 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 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. Under Public Act 474, only a brewpub, microbrewer, or SDM licensee may deliver beer and wine to an off-premises location, and may serve the alcohol if the server has received LCC-approved training. Consequently, if a catering customer wishes to provide spirits 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 liquor to the catered event.

The bill would accommodate catering customers by authorizing the LCC to issue a

catering permit to an on-premises licensee that provides off-premises catering services. Under the bill, it would be much more convenient for a catering customer to provide spirits to his or her guests, because he or she could purchase liquor directly from the caterer and have the caterer transport and serve the beverages. The bill also would bring the service of spirits by on-premises licensees at off-premises events in line with recent changes to the Code that allow brewpubs, microbrewers, and SDM licensees to deliver beer and wine to off-premises locations and serve those beverages to customers there.

Opposing Argument

The bill would adversely affect many small businesses that rely on package 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 liquor 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 the licensee 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.

In addition, under provisions added to the Code by Public Act 474 of 2008, some licensees now may deliver beer and wine to off-premises locations and serve drinks to customers at those locations. This authorization does not extend to Class C licensees, however, and does not apply to spirits.

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 similar 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: Senate Bill 186 (S-2) 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 verify the recipient's age and serve the alcohol, while current law does not address who may or must serve alcohol at private events. A liquor licensee and its employees also would have to receive training to serve alcohol, which includes seeking age verification and detecting

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.

In addition, Public Act 474 already authorizes certain licensees to deliver and serve beer and wine to off-premises locations anywhere in Michigan, without regard to local liquor license quotas or the knowledge of regulators or law enforcement about specific locations. The bill would build upon that legislation.

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 \$111,000 in the first year. This liquor permit revenue would be deposited directly into the General Fund. Any revenue from administrative fines collected under the bill would be deposited into the General Fund.

Fiscal Analyst: Elizabeth Pratt
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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.