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BILL ANALYSIS

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Senate Bill 322 (Substitute S-1 as reported)

Sponsor: Senator James Barcia

Committee: State Affairs, Tourism, and Transportation

Date Completed: 3-2-88

RATIONALE

The Michigan Liquor Control Act has a number of provisions designed to deter retail licensees from selling or furnishing liquor to persons under 21 years of age (minors). The penalties range from suspension or revocation of the liquor license and the imposition of civil fines to criminal prosecution on misdemeanor charges. Minors who violate the Act, however, generally are subject only to civil fines and the possibility of having to participate in a substance abuse prevention program. Some feel that the penalties prescribed for the licensees and the minors are inequitable. They cite the difficulties that bar owners and liquor retailers often have in monitoring which of their patrons actually are consuming or will consume the liquor, and argue that since in any instance in which a liquor licensee sells or furnishes liquor to a minor there are two violators of the Act, the minor should be subject to the same penalties as the licensee. Further, they believe that since police agencies use "decoys" or minors in undercover operations to catch liquor licensees in violation of the Act, in the interest of fairness and due process of law guidelines for these operations should be established in statute.

CONTENT

The bill would amend the Liquor Control Act to:

- Prohibit the suspension or revocation of a retail liquor license, the assessment of a penalty, or the prosecution of a licensee who sold or furnished liquor to a minor unless the minor was also prosecuted.
- Prohibit the prosecution of a licensee who sold or furnished liquor to a person over 21 years old who then provided it to a minor unless the licensee had actual knowledge that a minor was receiving the liquor.
- Make violation of the Act by a minor a misdemeanor, rather than a civil infraction punishable by the assessment of a civil fine or participation in a substance abuse program.
- Extend the Act's penalties for liquor violations to minors who attempt to purchase, possess or consume liquor in violation of the Act. (Currently, the penalties apply only to minors who actually purchase, possess or consume the liquor.)
- Specify guidelines for undercover operations conducted by police agencies or the Liquor Control Commission to identify violators of the Act through the use of decoys, i.e., minors who attempt to purchase liquor from retail licensees as part of the undercover operation.

Penalties for Licensees

Specifically, the bill would amend the Liquor Control Act to prohibit the Liquor Control Commission from suspending or revoking a retail liquor license or assessing the licensee

a penalty for selling or furnishing alcoholic liquor to a minor or allowing a minor to consume liquor, or possess it for personal consumption on the licensed premises, unless the minor was also prosecuted for violation of the Act. This provision would apply only if the enforcing agent involved in the prosecution of the violation by the licensee were the State Police or a local police agency; it would not apply if the enforcing agent were a Commission inspector, or if prosecution of the violation were the result of an undercover operation in which the minor acted under the direction of the State Police or a local police agency.

Further, a retail licensee or his or her agent, clerk or employer who sold or furnished liquor to a minor could not be prosecuted unless the minor was also prosecuted. This provision would not apply, however, if the prosecution were the result of an undercover operation.

If a retail licensee or his or her employee sold or furnished liquor to a person over 21 years old who then provided it to a minor, the licensee or employee could not be prosecuted for violation of the Act unless it could be shown that he or she actually knew that a minor was receiving the liquor.

Penalties for Minors

Currently, minors who purchase or possess liquor or consume it on licensed premises in violation of the Act generally are liable for civil fines ranging from up to \$25 for the first violation to no more than \$100 for the third and subsequent violations and subject to possible compulsory participation in substance abuse programs. Under the bill, such a violation would constitute a misdemeanor and the penalties would extend to minors who not only purchased, possessed or consumed the liquor, but also to those who attempted to purchase, possess or consume the liquor.

Use of Fraudulent Identification

Minors who use fraudulent identification to purchase liquor are guilty of a misdemeanor. The bill would extend this to minors who use fraudulent identification to attempt to purchase liquor.

Undercover Operations

The bill would also specify guidelines for undercover or "sting" operations conducted by a police agency or the Liquor Control Commission to identify violators of the Act through the use of decoys (minors who attempt to purchase liquor from retail licensees as part of the sting operation). Specifically, decoys used in undercover operations:

- Could not appear to be older than 21 years of age, could not wear a beard or mustache, and could not use a disguise.

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- Could not consume any liquor.
- Would have to be truthful in all inquiries and conversations with the retail licensee or his or her agent.
- Would have to take physical possession and control of the liquor.
- Would have to possess either valid identification or no identification at all. The enforcing agency would be required to check the decoy to ensure that he or she was not carrying false or misleading identification.

A photograph of the decoy showing the decoy's appearance and dress would have to be taken each day of the undercover operation. The picture would have to be available for inspection at any subsequent hearing.

The enforcing agency would be required to do all of the following:

- Retain and preserve evidence in the standard manner for preserving evidence and have such evidence available at any hearing arising out of the undercover operation.
- Be prepared to present testimony on the decoy operation including who was involved, why the operation was conducted, why certain establishments were chosen, the number of establishments contacted, and the number of violations arising from the operation.
- Conduct either an internal or external observation of the operation. An external observation of an off-premises establishment at least would have to include the decoy entering the establishment empty-handed and exiting the establishment with liquor.

No police officer, Commission agent, or other person over 21 years old could be in the close company of the decoy at a bar or table in an establishment licensed to sell alcoholic liquor for consumption on the premises, or at a counter in an establishment licensed to sell liquor for consumption off the premises, so that the licensee could reasonably presume that the decoy was in the company of a person over 21 years old.

Both the enforcing agency and the decoy would be required to inform the licensee, who was the subject of an undercover operation, about the operation as soon as it had been concluded.

MCL 436.20 et al.

FISCAL IMPACT

The bill would have an indeterminate impact on State and local government. The bill would eliminate civil fines for persons under 21 who violate Section 33b of the Act, and instead provide that violations would be a misdemeanor. Currently 50% of the civil fine revenue is credited to the Department of Public Health for substance abuse treatment and rehabilitation services. The Department of Public Health receives approximately \$120,000 annually from these fines. Enforcement costs from the misdemeanor provisions in Section 33b are not determinable.

ARGUMENTS

Supporting Argument

Since it can be almost a "rite of passage" for a minor to try to obtain liquor from a retail licensee, it can be very difficult for bar and party store owners to ensure that only persons of legal age are consuming the liquor sold in their establishments. Minors, however, who use disguises, fraudulent identification and other ruses to obtain liquor generally are subject to only minor penalties such as civil fines while licensees, who usually try their best to comply

with the law, may be subject to criminal charges and may lose their license and, hence, their livelihood. The bill would rectify the inherent inequity in the penalty provisions for licensees and minors by prohibiting the prosecution of licensees for violations of the Act unless the minors were also prosecuted, and subjecting minors to criminal misdemeanor charges for violations.

Response: A violation of the law is a violation of the law, regardless of who committed the violation, and the violator should be prosecuted. It does not make sense for a licensee to be exempt from prosecution simply because the minor who purchased or obtained the liquor from the licensee is not charged with or prosecuted for a violation of the Act. Both the licensee and the minor should know the provisions of the Act concerning the sale of liquor to minors and neither should be excused from his or her responsibility to abide by the law.

Supporting Argument

Placing in statute the guidelines for undercover operations would help ensure that charges brought as a result of the operation were not dismissed or subjected to challenges of unconstitutionality. It is only fair, too, that licensees know what police agencies may and may not do when conducting such operations and what rights the licensees have if they are caught in an undercover operation.

Response: Guidelines for undercover operations should be established and made known to liquor licensees but not in statute. Guidelines are just that—guidelines—and may have to be modified or clarified in response to problems encountered during undercover operations—changes that would be difficult to accomplish if they involved amending State statute.

Opposing Argument

A minor who only attempts to purchase, possess or consume liquor should not be guilty of a misdemeanor as the bill would provide. Civil fines or compulsory community service should be sufficient punishment and effective deterrents against future attempts.

Response: A minor who attempts to purchase or consume liquor on licensed premises intends to break the law, and he or she should pay the consequences of those actions, regardless of whether he or she was successful.

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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.