SFA BILL ANALYSIS

Senate Fiscal Agency • Lansing, Michigan 48909 • (517) 373-5383

Senate Bill 809 (as reported without amendment)
Sponsor: Senator Gilbert J. DiNello
Committee: Regulatory Affairs

Date Completed: 5-23-88

RATIONALE

As a part of the so-called "liability reform package" enacted in 1986, the Michigan Liquor Control Act was amended to require retail liquor licensees and applicants to file proof of financial security for dram shop liability of at least $50,000, beginning April 1, 1988. Under the Act, the Liquor Control Commission (LCC) must verify that all licensees have liquor liability coverage, and the LCC has implemented a computer system to do so. Some people feel that the mandatory coverage requirement is unreasonable, because it legislates what essentially is a business decision. Also, many people claim that $50,000 is a meaningless minimum, because most settlements would be in excess of that amount; or that it is a burdensome requirement for small operators who may not do $50,000 worth of business in a year.

CONTENT

The bill would amend the section of the Michigan Liquor Control Act known as the dramshop act to delete a requirement that retail liquor licensees and applicants for licenses, beginning April 1, 1988, file with the Liquor Control Commission proof of financial responsibility providing security for dram shop liability of at least $50,000. The bill also would delete a requirement that a liquor license be revoked if a licensee does not provide proof of financial responsibility to the Commission. In addition, the bill would delete provisions that allow the $50,000 security to be in the form of cash, unencumbered securities, liability insurance, a constant value surety bond, or membership in an authorized self-insurance pool, and allow the requirement to be waived for licensees if the Insurance Commissioner certifies that insurance is not available at a reasonable price.

MCL 436.22a

FISCAL IMPACT

The bill would have an indeterminate fiscal impact on State and local government. The bill would have no fiscal impact on the Insurance Bureau because the Bureau licenses insurance companies and the number of insurance companies to be licensed would not change.

The bill would have no fiscal impact on the Liquor Control Commission (LCC) this fiscal year, but would have an indeterminate fiscal impact in future years. Under the current Act, the LCC is required to verify that all licensees have liquor liability coverage. The LCC developed a computer system and provided a great deal of clerical entry effort (some on overtime) without appropriating additional funds or FTEs. This work will be complete on May 1, 1988; therefore, the bill would not have a fiscal impact on the LCC this year. If the mandatory liability coverage requirement were removed, the LCC would experience indeterminate savings by not having to run programs and work overtime to verify liquor liability coverage.

ARGUMENTS

Supporting Argument

Whether or not to purchase dram shop liability insurance coverage is essentially a business decision. The State should not require such coverage, because the requirement interferes with liquor licensees' right to do business as they choose. Although many people may feel that it is sensible and practical to carry liability coverage, such coverage should not be mandated by law.

Supporting Argument

The $50,000 minimum level of coverage required by the Act is meaningless and burdensome. First, very few insurers will write dram shop liability coverage, and most of those will not offer it at a coverage level that low. So if a licensee chooses to provide the required security through insurance coverage, he or she likely would have to purchase a policy worth considerably more than $50,000. Second, a liability claim against a liquor licensee likely would be for a greater amount than the Act's minimum security level. The coverage requirement is little more than token protection. Third, many licensees who are small operators may not even earn $50,000 in a year. For those licensees, the coverage requirement is prohibitive to doing business. Finally, the requirement of mandatory coverage could encourage the filing of more claims against licensees.

Response: The rationale for mandatory coverage is to provide innocent victims with protection against the illegal sale of alcohol to intoxicated persons. While proponents of the bill may be correct in claiming that the $50,000 minimum coverage is a token requirement, but that contention suggests that the requirement should be higher, not that it should be removed altogether. Although removing the minimum coverage requirement would not affect claimants' rights to bring suit, it would make it more difficult for an injured party to collect damages. Finally, mandatory coverage would not lead to an increase in the number of suits—the decision to bring an action is based on a determination of whether a claimant can meet the burden of proof, not on how much insurance coverage a licensee carries.

Opposing Argument

The bill favors liquor licensees at the expense of victims and potential victims. Yes, mandatory liability coverage requirements do place a financial burden on licensees, but the actions of irresponsible licensees place a financial and emotional burden on victims. If a person can afford to be in the liquor sales business, he or she should be able to afford responsible liability coverage. If a licensee is unwilling to provide such coverage, he or she should not be in business.

Response: The bill would not limit the right of victims to pursue damage claims in the courts. It merely would remove from statute the business decision of whether to carry insurance coverage and return it to the individual licensees, where it belongs.

Opposing Argument

The mandatory liability coverage requirement grew out of the negotiating process that resulted in the 1986 liability reform package. There was much give-and-take on all sides of the negotiations. By returning to the issue and removing a facet of that negotiated agreement, the bill would limit the credibility of future attempts to negotiate multi-faceted issues before the Legislature.

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Senate Bill 810 (Substitute S-1 as reported)
Sponsor: Senator Jerome T. Hart
Committee: Health Policy

Date Completed: 9-22-88

RATIONALE

The County Health Facilities Corporations Act authorizes county boards of commissioners to incorporate certain county public hospitals, specifically those that operated under Public Act 350 of 1913 and Public Act 109 of 1945. (Those Acts enabled counties to establish and maintain public hospitals, and permitted boards of supervisors of certain counties to acquire, establish, maintain, and operate hospitals, county general hospitals, and sanitoriums, respectively.) The Act also permits any county owning or operating a county hospital pursuant to charter or any statute other than Public Acts 350 and 109 to organize all health care facilities, other than medical care facilities, as a corporation by adoption and filing of articles of incorporation without a vote of the county electors. The three hospitals in the State originally organized under Public Act 177 of 1925, which provides for the construction, maintenance, and operation of hospitals and sanitoriums for the treatment of tuberculosis, reportedly have been considering incorporation under the County Health Facilities Corporations Act. Of those hospitals, Saginaw Community Hospital reportedly may take steps to incorporate. Under Public Act 177, county boards are authorized to raise operational funds by assessing up to one mill a year. Some people are concerned that a Public Act 177 hospital, such as Saginaw Community Hospital, could lose its ability to levy the one-mill tax if it incorporated under the County Health Facilities Corporations Act.

CONTENT

The bill would amend the County Health Facilities Corporations Act to permit a county public hospital organized and operated under Public Act 177 of 1925 to assess up to one mill in any one year in order to acquire, construct, and operate health care facilities without a vote of the county electors and to appropriate money from its general fund without limitation. This provision currently applies to a county public hospital organized and operated under Public Act 109 of 1945.

(Under Public Act 177 of 1925, a board of supervisors of a county with a population greater than 30,000 may establish, maintain, and operate a hospital or sanatorium for tuberculosis treatment. The Act also permits two or more counties to establish, maintain, and operate a joint county tuberculosis sanatorium.)

MCL 331.1305

FISCAL IMPACT

The bill would have no significant impact on State GF/GP expenditures either in terms of costs or savings. Any increases in health care services and, therefore, additional costs that could result from hospitals incorporating under the Act, would probably be offset by increases in operating efficiencies and thus reduced costs, due to the replacement or upgrading of antiquated facilities and delivery systems. An indeterminate amount of savings could accrue to certain counties to the extent that the transfer of health care facilities and services to a county nonprofit health care corporation reduced or eliminated the counties' financial obligations to operate or maintain these facilities or services.

ARGUMENTS

Supporting Argument

Over the years, the operation of hospitals has changed dramatically. Unfortunately, the limited wording of statutes that created certain county hospitals, such as Public Act 177 of 1925, has prevented these hospitals from diversifying into other health care areas, which has stifled growth and competitiveness. The County Health Facilities Corporations Act allows hospitals that elect to incorporate under it to compete more effectively. It is not certain, however, whether county hospitals established under Public Act 177 of 1925 and currently collecting a one-mill tax levy, as authorized under Public Act 177, still could collect the tax once they incorporated. Yet, these hospitals cannot afford to lose the operational funds generated by the tax, even after incorporation. Under the County Health Facilities Corporations Act, hospitals created under Public Act 109 of 1945 are allowed to assess a one-mill tax levy per year. This same provision should be extended to hospitals created under Public Act 177.

Opposing Argument

The County Health Facilities Corporations Act is designed to aid certain county hospitals in competing in the health care market, especially with for-profit/private hospitals. If county hospitals, such as those created under Public Act 177 of 1925 are allowed to keep their one-mill subsidy, then these county hospitals would have an unfair advantage and would not be competing on equal ground with private hospitals.

Response: Public Act 177 hospitals need the one-mill tax for operation and maintenance, in part because they are required to care for indigent patients. Furthermore, some of these hospitals operate as long-term care and psychiatric unit hospitals, unlike many private hospitals which operate as acute care facilities. Thus, county hospitals that incorporated under the County Health Facilities Corporations Act and continued to collect the one-mill tax would not gain an unfair advantage over private hospitals.

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