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BILL ANALYSIS

Senate Fiscal Agency

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Senate Bill 119 (Substitute S-1 as reported)

Sponsor: Senator James Barcia

Committee: Regulatory Affairs

Date Completed: 3-8-89

RATIONALE

The 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 have in monitoring which of their patrons actually are consuming or will consume the liquor, and argue that in any instance in which a liquor licensee sells or furnishes liquor to a minor, both the licensee and the minor are violators of the Act. It has been suggested that minors should be subjected to the certainty of penalties in the same way that licensees are subjected, and that the penalties should be harsh enough to pose a deterrent.

CONTENT

The bill would amend the Liquor Control Act to do the following:

- Prohibit the suspension or revocation of a retail liquor license, the assessment of a penalty, or the prosecution of a licensee for selling or furnishing liquor to a minor, unless the minor was issued an appearance ticket.

- Make a violation of the Act by a minor a civil infraction punishable by a fine of at least \$50, permit a minor to be ordered to perform community service, and require the court to suspend a minor's driver's license for periods specified in the bill.
- Extend the Act's penalties for liquor violations to minors who attempt to purchase or possess liquor in violation of the Act.
- Make it a misdemeanor for a person 21 years old or older to furnish liquor to a minor if the liquor were purchased from a retailer (a person who is licensed by the Liquor Control Commission and sells to consumers).

Currently, the Act contains provisions to deter retailers from selling or furnishing alcohol to persons less than 21 years old (minors); penalties include license suspension or revocation, civil fines, and criminal prosecution on misdemeanor charges. The bill provides that if a retailer violated the Act by selling or furnishing liquor to a minor, or allowing a minor to consume or possess liquor for consumption on the premises, the Liquor Control Commission (LCC) could not suspend or revoke the retailer's license or assess a penalty against the licensee unless the minor who purchased or received the liquor from the licensee was issued an appearance ticket. This provision would apply only if the enforcing agent involved in the prosecution of 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 policy agency. Further, a retailer who sold or furnished liquor to a minor could not be prosecuted unless the minor was issued an appearance ticket; this provision would not apply if the prosecution were the result of an undercover operation or if the enforcing agent involved in the prosecution were a Commission inspector rather than a policy agency. (An "appearance ticket" is defined in the Act as a complaint or written notice issued by a law enforcement officer or LCC inspector directing a person to appear in a designated district or municipal court, in connection with the alleged violation for which a civil fine is prescribed. Upon appearance, a defendant can admit to the allegations and accept the civil fines as directed by the judge, or deny the allegations, at which time a trial date is set.)

The bill provides that an undercover operation conducted by a police agency or the LCC to enforce the Act's provisions on the sale or furnishing of alcoholic liquor to a minor could not use coercion or any promise of freedom from prosecution in order to obtain the minor's participation in the undercover operation.

Currently, the Act provides that a minor who purchases, possesses, or consumes liquor in violation of the Act is liable for a civil fine; the first violation can result in a fine of up to \$25; a second violation, a fine of up to \$50 and/or participation in a substance abuse program; and a third violation, a fine of up to \$100 and/or participation in a substance abuse program. The bill, instead, would make a violation a civil infraction punishable by a fine of at least \$50 but not more than \$500, and/or participation in a substance abuse program. A minor also could be ordered to perform community service. In addition, for a first violation the court would have to order the Secretary of State to suspend the minor's operator or chauffeur license for at least 90 days; for a second violation the court would have to order suspension of the minor's license for at least 90 days but no more than 180 days; and for a third or subsequent violation the court would have to order suspension of the minor's license for at least 90

days but not more than one year. The bill also would extend the penalties to minors who attempt to purchase or possess liquor in violation of the Act.

The bill would make it a misdemeanor for a person 21 years old or older to furnish liquor to a minor if the liquor were purchased from a retailer. The bill provides that a person who violated this provision would have to be fined \$500, and could be sentenced to imprisonment for up to 90 days. A person could not be prosecuted under this provision unless the minor who received the liquor was issued an appearance ticket.

The bill would take effect 60 days after the date of its enactment.

MCL 436.20 et al.

FISCAL IMPACT

The bill would have an indeterminate fiscal impact on State and local government. Additional revenues from increased civil fines or the number of persons who would be imprisoned cannot be estimated.

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 required to go to court, and by subjecting minors to stiff penalties 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 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

The bill would force minors to share responsibility for illegally obtaining or attempting to obtain liquor. The current situation, which in effect only penalizes the retailer while the minor gets a slap on the wrist or, in many cases, no penalty at all, places the entire responsibility on the retailer. This has created a situation in which minors can hop from bar to bar on any given night, hoping that at some point they will find an inattentive employee who fails to check properly for identification or is fooled by a false identification. The bill, especially the provisions that would require suspension of driving privileges, would give minors a reason to think twice before attempting to get a drink.

Opposing Argument

A minor who only attempts to purchase, possess or consume liquor should not be subject to the penalties 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 that action, regardless of whether he or she was successful.

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