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SFA



BILL ANALYSIS

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Senate Bill 1030 (Substitute S-1 as passed by the Senate)
Sponsor: Senator Bill Bullard, Jr.
Committee: Economic Development, International Trade and Regulatory Affairs

Date Completed: 8-11-98

RATIONALE

There has long been considerable public concern regarding alcohol abuse and drunk driving. According to Mothers Against Drunk Driving (MADD), a majority of Americans fear drunk driving more than any other highway safety problem. In 1996, MADD reports, 17,126 people were killed in the United States in alcohol-related crashes and more than 1 million were injured. Many people feel that establishments that provide alcohol should accept additional responsibility for preventing certain customers (such as minors and intoxicated persons) from consuming alcohol. Under the dramshop Act (MCL 436.1801), a retail licensee must not directly or indirectly, individually or by a clerk, agent, or employee, sell, furnish, or give alcoholic liquor to a minor or a person who is visibly intoxicated. An individual who suffers damage or who is injured by a minor or visibly intoxicated person has a right of action against the retail licensee who, by providing the alcoholic liquor, caused or contributed to the intoxication leading to the accident. Reportedly, courts more frequently are finding restaurants and taverns liable for damages in civil suits filed by the victims of drunk drivers. Some people believe that an extensive program also should be established and made available to all liquor retail licensees to train and educate their employees about responsible alcohol dispensement.

CONTENT

The bill would amend the Michigan Liquor Control Code to require the Liquor Control Commission to establish a program to designate certain retail licensees as responsible vendors; require the Commission to approve a server training program with certain curriculum topics and certification procedures; and specify penalties for a

prohibited sale by a retail licensee designated as a responsible vendor.

The following is a detailed description of the responsible vendor program.

Commission Responsibilities

The Commission could adopt the existing standards and programmatic framework of private entities and could delegate nondiscretionary administrative functions to outside entities.

The Commission would have to designate as a responsible vendor a retail licensee who made available to all full-time and part-time retail employees, within 60 days after they were hired, a server training program and who also was free of convictions or administrative determinations involving prohibited sales for at least 12 months before applying for the designation. The designation would continue until suspension by the Commission.

Program Topics

The Commission would have to approve a curriculum for a server training program presented by a certified instructor in a manner considered by the Commission to be adequate, that would include, but would not be limited to, all of the following topics:

- Identification of progressive stages of intoxication and visible signs associated with each stage.
- Identification of the time delay between consumption and visibility of signs of progressive intoxication.
- Basic alcohol content among different types of measured drinks containing alcohol.

- Variables associated with visible intoxication including rate of drinking, experience, weight, food consumption, sex, and use of other drugs.
- Personal skills to handle slow-down of service and intervention procedures.
- Procedures for monitoring consumption and maintaining incident reports.
- The understanding of acceptable forms of personal identification, techniques for determining validity of identification, and procedures for dealing with fraudulent identification.
- Assessment of the need to ask for identification based on appearance or company policy.
- Identification of potential second-party sales and furnishing alcohol to minors by persons 21 years of age or older.
- The understanding of possible legal, civil, and administrative consequences of violations of the Code, the rules of the Commission, and other pertinent State laws.
- The understanding of Michigan laws pertaining to minors attempting to purchase, minors in possession, and second-party sales or furnishing of alcohol from adults to minors.
- Knowledge of the legal hours of alcohol service and occupancy.
- Identification of signs of prohibited activities, such as gambling, solicitation for prostitution, and drug sales.
- Any other pertinent laws as determined by the Commission.

Program Administrator

The bill would define “administrator” as a qualifying company, post secondary educational institution, or trade association authorized by the Commission to offer server training programs and instructor certification classes in compliance with the bill and to certify to the Commission that those persons met the bill’s requirements. A person could apply to the Commission for qualification as an administrator.

Upon approval by the Commission of a server training program, the Commission would have to appoint the person sponsoring the server training program as an administrator of that program. The administrator would have to provide a certification to the Commission that a retail licensee had successfully completed the server training program offered by a certified instructor and approved by the Commission and would have to recommend that the Commission designate the licensee as a

responsible vendor. The Commission also would have to issue an instructor certification and identification card to an individual presenting acceptable evidence of having successfully completed instructor certification classes.

Responsible Vendor Status

As a condition of the designation of a licensee as a responsible vendor, the licensee would have to make available to the administrator in not less than 60-day time increments records sufficient to verify the names and social security numbers of his or her employees. The administrator would have to provide to the Commission a list of names and social security numbers of individuals who had successfully completed the server training program and would have to monitor the licensee in order to verify continued compliance of the licensee’s status as a responsible vendor. The administrator would have to notify the Commission as soon as it determined that the licensee had failed to maintain the standards for server training or had failed to cooperate with the administrator’s verification procedure. Upon receiving such notice from the administrator, the Commission would have to suspend the licensee’s designation as a responsible vendor.

Penalties

The Commission could suspend the designation of a retail licensee as a responsible vendor upon a conviction or administrative determination of a prohibited sale on the licensee’s licensed premises. The retail licensee could reapply for designation as a responsible vendor after 12 months from the date of the conviction or administrative determination of a prohibited sale if the licensee were not convicted or administratively determined to have engaged in a prohibited sale on the licensed premises. After the first time a retail licensee lost its designation, the licensee would not be eligible to reapply for the designation until an additional three months for each subsequent conviction or determination. The three-month time periods would be in addition to the 12-month period described in this provision.

A responsible vendor would not be considered to be in violation of the administrative prohibition that pertains to allowing an intoxicated person to frequent or loiter on the licensed premises (R 436.1005(4)), unless the facts demonstrated otherwise.

Proposed MCL 436.1906

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 bill would establish a responsible vendor program approved by the Commission to designate certain retail licensees as responsible vendors. Responsible vendors would have to make available a server training program to all retail employees, and remain free of convictions involving prohibited sales for at least 12 months. Designation as a responsible vendor would allow the establishment to take a positive and proactive stance in the public battle against drunk driving.

In addition, server training programs would benefit both the establishments and the community. The servers would learn how to observe customers' behavior, refuse or monitor alcohol service, recognize and foresee potential problems, understand civil liabilities and consequences, and employ other procedures necessary to protect and better serve customers. By reducing the chance that an employee would sell alcohol to an intoxicated person, the program would reduce the risk that the customer could become involved in an alcohol-related accident. This would both protect the public and reduce the liability exposure of licensees, as well as avoid the need to resort to civil remedies and criminal penalties after an accident has occurred.

Legislative Analyst: N. Nagata

FISCAL IMPACT

The bill would increase the administrative responsibilities of the Commission by requiring it to monitor and certify these licensees. According to the Commission, the cost associated with this new program is estimated to be approximately \$40,000, or equivalent to one full-time employee to assist the Commission in carrying out these duties.

Fiscal Analyst: M. Tyszkiewicz

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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.