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SFA**BILL ANALYSIS**

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Senate Bill 1030 (as introduced 3-24-98)

Sponsor: Senator Bill Bullard, Jr.

Committee: Economic Development, International Trade and Regulatory Affairs

Date Completed: 5-20-98

CONTENT

The bill would amend the Michigan Liquor Control Act to require the Liquor Control Commission to establish a program to designate certain retail licensees as responsible vendors; create a server training program with certain curriculum topics and certification procedures; and specify penalties for a prohibited sale under the designation of a retail licensee as a responsible vendor. In addition, the license fee of a person designated as a responsible vendor at the time of the filing of a renewal application would be reduced to \$50.

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

Commission Responsibilities

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

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 equivalency and 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 old or older.
- The understanding of possible legal, civil, and administrative consequences of violation of the Act, 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.

Certification

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

Administrator

A person could apply to the Commission for qualification as an administrator for the offering of server training programs and instructor certification classes. 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 receipt of such notice from the administrator, the Commission would have to suspend the licensee's designation as a responsible vendor.

Penalties

The Commission could not suspend or revoke the license of a retail licensee qualified as a responsible vendor for a prohibited sale by an employee of the licensee if the employee had successfully completed a server training program before committing the prohibited sale.

Further, the Commission would have to consider a retail licensee's designation as a responsible vendor in mitigation of administrative sanctions regarding a prohibited sale and could not order an administrative fine exceeding 50% of the maximum fine allowed under the Act upon its determination that a prohibited sale had occurred.

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 losing such a designation could reapply for designation as a responsible vendor upon the passage of 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 instance of a retail licensee losing its designation as a responsible vendor, that retail licensee would not be eligible to reapply for such 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, unless the facts demonstrated otherwise (R 436.1005(4)).

Other Provisions

Under the Act, the Commission and any commissioner or duly authorized agent of the Commission may suspend or revoke any license and assess a penalty upon a violation of the Act. The bill would replace penalty with an administrative fine.

Further, the Act states that a licensee does not have a right of appeal from a final determination of the Commission regarding a sanction, except by writ of certiorari to the circuit court. The bill would replace writ of certiorari to the circuit court with leave to a court of competent jurisdiction.

MCL 436.19 et al.

Legislative Analyst: N. Nagata

FISCAL IMPACT

This bill would reduce the amount of the retail license fee for any licensee that received a responsible vendor designation. Currently the Commission collects approximately \$10,000,000 in retail license fees from the 26,800 licensees. If each licensee were to receive this designation, the revenue collected would be reduced to \$1,340,000. This reduction would affect the Commission's licensing and enforcement funding as well as funding to local governments.

Fiscal Analyst: M. Tyszkiewicz