House
Legislative
Analysis
Section

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LIQUOR SERVER TRAINING; LOSS OF LICENSES DUE TO SALES TO MINORS

House Bill 5668 as enrolled
Public Act 431 of 2000
Second Analysis (1-9-01)

Sponsor: Rep. Michael Green
House Committee: Employment Relations, Training and Safety
Senate Committee: Economic Development, International Trade and Regulatory Affairs

THE APPARENT PROBLEM:

In 1980, the Michigan Licensed Beverage Association developed a program called "Techniques of Alcohol Management" or "TAM," a one-day training program for training employees who work in settings where alcohol is sold and consumed on topics such as how to tell when a customer is intoxicated, skills to handle intoxicated customers, how to check for valid proof of age identification, and so forth. The program was so successful that the national association adopted and uses it. The national brewer, Anheuser Busch, also has developed a similar program, "Training for Intervention Procedures" or "TIPS."

In 1998, Public Act 391 amended the Michigan Liquor Control Code to establish a program to designate certain retail liquor license holders as "responsible [liquor] vendors" and to specify the minimum content of [liquor] "server training" programs. Among other things, the 1998 amendment to the code also allows the Liquor Control Commission to adopt for its "responsible vendor" program "the existing standards and programmatic framework of private entities" such as the TAM and TIPS programs.

At the request of the licensed beverage industry, legislation has been introduced that would make liquor server training mandatory, and not just permissible, for certain retail "on premise" liquor licenses.

In an unrelated issue, the Michigan Liquor Control Code currently allows the Liquor Control Commission ("upon due notice and proper hearing") to suspend or revoke any license upon a violation of the act. In addition, however, the code *requires* the commission to suspend or revoke the license of a licensee who is found liable for three or more separate violations involving the sale, furnishing, or giving of alcoholic liquor to a minor within a 24-month period. Each of the three recently opened temporary commercial casinos in Detroit (see BACKGROUND INFORMATION) is required to compile certain information every year that then is incorporated into an annual report that the Gaming Control Board is required to file with the governor and submit to the chairs of the legislative committees that govern casino-related issues. Among the information required of the casinos is the number of minors who were detected illegally consuming alcohol on the casino premises. At the request of the commercial casino industry, legislation has been proposed that would nullify the automatic suspension of a liquor license for serving minors under certain circumstances.

THE CONTENT OF THE BILL:

The bill would amend the Michigan Liquor Control Code (Public Act 58 of 1998) to prohibit the Liquor Control Commission – beginning not later than July 1, 2002 – from issuing new "on premise" liquor licenses (i.e., "Class C" or "special" licenses, see BACKGROUND INFORMATION), or from transferring more than 50 percent interest in an existing "on premise" license, unless the applicant met certain minimum supervisory personnel training requirements, and to require certain licensees to meet these requirements. The bill also would require the commission to approve the establishment of a liquor "server training program" for all such applicants, as well as for any existing retail licensees the commission thought needed such training. Further, the bill would exempt certain violations from the requirement that licenses be suspended or revoked upon a finding of three or more violations for selling liquor to minors.

Trained supervisors. The bill would amend the code to prohibit the Liquor Control Commission, with certain exceptions, from issuing a new "on premise" liquor license or from transferring more than 50 percent interest in an existing "on premise" liquor license unless the applicant or transferee could prove that he or she had ("employed or ha[d] present"), at a minimum, supervisors (a) who had successfully completed a liquor server training program under the code and (b) who were present on the licensed premises on each shift and during all hours when liquor was served. The bill also would require that these new "on premises" licensees or transferees have employed or present on the licensed premises, at a minimum, trained supervisors ("supervisory personnel" who had successfully completed a liquor server training program) on each shift and during all hours in which alcoholic beverages were served.

The commission could consider someone who was enrolled and actively participating in a liquor server training program as having "successfully completed" the program during the time in which the individual was participating in the training program. The commission also could allow an applicant or a "conditionally approved" licensee (not defined in the bill or the code) at least 180 days (more, upon a showing of good cause) to meet the bill's minimum personnel training requirements. If a "conditionally approved" licensee failed to comply with the bill's requirements, the commission could suspend his or her license.

"On premises" licensees or transferees would be required to keep a copy of either a "responsible vendor" designation (the code defines "responsible vendor" to mean "a designation by the commission of a retail licensee meeting the [code's] standards.") or proof of completion of liquor server training on the licensed premises in order to facilitate the verification of the designation by the commission, its agent, or law enforcement officer.

Violations, penalties. If the Liquor Control Commission determined that an "on premises" licensee had violated the bill's requirements, it could revoke or suspend the licensee's license or fine the licensee up to $300. However, a violation of the bill's requirements would not be a misdemeanor violation of the code under section 909.

Selling liquor to minors. Currently, subsection 801(2) of the code prohibits retail licensees from selling, furnishing, or giving alcoholic liquor to minors (except as otherwise allowed by the code) or to people who are visibly intoxicated. Section 903 of the code further requires the Liquor Control Commission to hold a hearing and order the suspension of revocation of the license if the licensee is found to have three or more "separate" violations of section 801(2) within a 24-month period. The bill would amend the code to exempt license suspension or revocations for such violations with regard to minors if the licensee discovered the violation and disclosed it "to an appropriate enforcement agency immediately upon discovery."

Waivers. The commission could waive the bill's liquor server training requirements on the basis of either (a) the licensee's "responsible operating experience or training" or (b) the person's demonstration of an "acceptable level of responsible operation" either as a licensee during the preceding three years or as a manager with "substantial experience in serving alcoholic liquor" (these terms are not defined in the bill or the code).

Instructors. The code currently defines "instructor" to mean "an individual certified by an administrator and aproved by the commission to teach server training programs." The bill would amend the definition of "instructor" to add that an "instructor" could be a licensee or one of his or her employees, and would allow a "certified instructor" (not defined in the code or the bill) who was a licensee or a licensee's employee (a) to offer liquor server training programs approved by the commission to the licensee's employees and (b) to certify to the commission those persons who successfully completed the liquor server training program.

Server training programs. Currently, the code defines liquor "server training program" to mean "an educational program whose curriculum has been approved by the commission under the standards described in [the code] and is offered by an administrator to a retail licensee for its employees." (The code defines "administrator" to mean "a qualifying company, postsecondary educational institution, or trade association authorized by the commission to offer server training programs and instructor certification classes in compliance with [the code] and to certify to the commission that those persons meet the [code's] requirements.") The bill would amend this definition to allow instructors, as well as administrators, to offer liquor server training programs to retail licensee for their employees. (See BACKGROUND INFORMATION.)

The bill also would require the Liquor Control Commission to approve the establishment of a liquor server training program designed (a) for all new "on premises" licensees or transferees of more than a 50 percent interest on an "on premises" license on or after the mandatory server training program had begun, as well as (b) for any existing "retail" licensees that the commission had determined to be in need of training due to the frequency and types of violations of the code involving the serving of alcoholic liquor.

However, the bill's server training program requirement would not apply to "special" licenses (see BACKGROUND INFORMATION below), unless the commission determined that certain special licensees, based on the size and nature of the licensed event, required liquor server training.

As already is the case with regard to the commission's designation of "responsible vendors," the commission could, in approving the establishment of liquor server training programs, adopt the existing standards and "programmatic framework" of private entities and could delegate nondiscretionary administrative functions to outside private entities.

MCL 436.1501, 436.1903, and 436.1906

BACKGROUND INFORMATION:

Liquor licenses. Although the Liquor Control Code does not explicitly define either "on premises" or "retail" liquor licenses, the two terms presumably refer to licenses for places where alcoholic liquor generally is bought and consumed on the premises (an "on premise" liquor license), rather than bought to be consumed elsewhere (a "retail" liquor license). Though the code does not explicitly specify which licensed locations fall under the term "on premises," it does define "license," "special license" (which, in administrative rules, restricts the sale of alcoholic liquor for consumption on the premises only), and "Class C license" (the definition of which does specify on-premise consumption of the liquor sold, though not the specific kind of premise).

Under the code, a "license" is "a contract between the [Liquor Control Commission, which is housed in the Department of Consumer and Industry Services] and the licensee granting authority to that licensee to manufacture and sell, or sell, or warehouse alcoholic liquor in the manner provided by" the code. A "Class C license"means "a place licensed to sell at retail beer, wine, mixed spirit drink, and spirits for consumption on the premises." A "special licenses" is defined in the code to mean "a contract between the commission and the special licensee granting authority to that licensee to sell beer, wine, mixed spirit drink, or spirits"; administrative rules specify that a "special" license "authorizes a person to sell alcoholic liquor at retail for consumption on the premises for a limited period of time." (R 426.572)

The term "on premise license," then, presumably refers to "Class C" licenses and "special" licenses," and includes any or all of the following locations defined in the code or listed in the license fee section of the code:

• bars (a"bar" is defined as "a barrier or counter at which alcoholic liquor is sold to, served to, or consumed by customers"),

• brewpubs (which can sell at their "licensed premises the beer produced for consumption on or off the licensed brewery premises"),

• "Class A" hotels (which are licensed to sell "beer and wine for consumption on the premises only"),

• "Class B" hotels (which are licensed to sell "beer, wine, mixed spirit drink, and spirits for consumption on the premises only"),

• micro brewers (who can sell the beer they produce to consumers at the licensed brewery premises for consumption on or off the licensed brewery premises),

• taverns (who can sell at retail beer and wine for consumption on the premises only),

• dining cars or other railroad or Pullman cars selling alcoholic liquor,

• watercraft "licensed to carry passengers, selling alcoholic liquor,"

• airlines "licensed to carry passengers in this state which sell, offer for sale, provide, or transport alcoholic liquor,"

• clubs selling beer, wine, mixed spirit drink, and spirits (though neither the definition of "club" nor the license fee section of the code that sets license fees for clubs specifically mentions consumption on or off club premises), and

• special licenses.

Liquor server training programs. Currently, the code defines "server training program" to mean "an

educational program whose curriculum has been approved by the commission under the standards described in this section [of the code] and is offered by an administrator to a retail licensee for its employees." The commission must approve the curriculum of a server training program ("presented by a certified instructor in a manner considered by the commission to be adequate"), which must include a minimum list of specified topics. The topics include, but are not limited to, the following:

• The identification of progressive stages of intoxication and the visible signs associated with each stage;

• The identification of the time delay between consumption and visibility of signs of progressive intoxication;

• Basic alcohol content among different types of measured drinks containing alcoholic liquor;

• Variables associated with visible intoxication, including the 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 the validity of identification, and procedures for dealing with fraudulent identification;

• Assessment of the need to ask for identification based on appearance or company policy;

• The identification of potential second-party sales and furnishing alcohol to minors by persons 21 years of age or over;

• 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;

• The identification of signs of prohibited activities, such as gambling, solicitation for prostitution, and drug sales; and

• Any other pertinent laws as determined by the commission.

The Detroit commercial casinos. In November 1996, Michigan voters approved Proposal E, which authorized three licensed commercial casinos to be opened in Detroit. Proposal E was subsequently enacted as the Michigan Gaming Control and Revenue Act (Public Act 69 of 1997), and on July 28, 199, the Michigan Gaming Control Board issued the first of the three commercial casino licenses to MGM Grand Detroit, LLC (Limited License Corporation). The board issued the second license on December 14, 1999, to Detroit Entertainment, LLC, and the third, and final, license was issued on November 8, 2000, to Greektown Casino, LLC. Each of the limited license corporations has opened a temporary casino, and has up to 48 months to open a permanent casino. The temporary MGM Grand Detroit Casino is located at 1300 John Lodge Freeway; the temporary MotorCity Casino is located at 2901 Grand River Avenue; and the temporary Greektown Casino is located at 555 East Lafayette. These are the first non-Indian casinos allowed in the state.

Casino self-reporting of violations involving minors. Section 215 of the Michigan Gaming Control and Revenue Act, among other things, requires each of the three licensed casinos to have a study conducted each year on "minors and compulsive gaming" and to compile information on the number of minors (people less than 21 years old) who were (a) denied entry into the casino; (b) physically escorted from the casino premises; (c) detected participating in gambling games other than slot machines and those detected using slot machines; (d) taken into custody by a law enforcement agency on the casino premises; and (e) detected illegally consuming alcohol on the casino premises.

This information must be included in the annual report that the act requires the Michigan Gaming Control Board to make each year to the governor and legislature (along with "an account of the board actions, its financial position and results of operation under th[e] act, and any recommendations for legislation that the board considers advisable." (MCL 432.215)

Certificate of suitability and liquor license. Under the Michigan Gaming Control and Revenue Act's administrative rules, among other things, in order to be licensed, a casino operator must obtain a "certificate of suitability,"defined in Rule 432.1101(o) to mean "a written document issued by the board certifying that an applicant [for a casino license] if the applicant meets all of the following: (i) The conditions of a certified development agreement with a city [i.e. Detroit; and] (ii) The conditions set forth by the board in the certificate of suitability and the requirements of the act and these rules." Under Rule 432.1308, a certificate of suitability is valid while the holder is making satisfactory progress toward meeting the certificate's conditions, and the Michigan Gaming Control Board cannot issue a casino license to a certificate holder until the board determines that the holder is in compliance with the conditions and requirements of its certificate, the Michigan Gaming Control and Revenue Act, and the administrative rules issued under the act.

If the holder of a certificate of suitability plans to serve alcoholic beverages or liquor in connection with its gambling operations or related casino enterprises, the certificate holder must apply for and receive the appropriate liquor license from the Michigan Liquor Control Commission during the "interim compliance period." (The rule also lists other actions that a certificate holder must take during the "interim compliance period, while the certificate of suitability is in effect.")

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill would result in an indeterminate increase in costs to the state, probably of less than $25,000 a year for the additional record-keeping and oversight responsibilities it would impose on the Liquor Control Commission. (1-3-01)

ARGUMENTS:

For:

The bill would make mandatory, for certain retail, "on premises" liquor licenses, the permissive liquor server training currently allowed under the 1998 amendment (Public Act 391) to the Liquor Control Code. This not only could help protect retail, "on premises" liquor license holders (such as bars, tavern, and hotels and restaurants that served alcohol) from costly lawsuits, it also could improve public safety by enhancing the ability of employees who sold alcohol for on-site consumption to do their jobs better and more responsibly. Given the growing public concern over the dangers of alcohol abuse and drunk drivers, the bill would extend the scope and impact of the voluntary program put into law two years ago by making the existing permissive program mandatory for new "on premises" liquor licenses, and by authorizing the Liquor Control Commission to require existing licensees with a history selling alcohol to minors and obviously intoxicated people to have trained supervisors on the licensed premises whenever liquor was sold. The bill is particularly important in light of the upcoming census, because with a likely increase in population additional new so-called "quota" licenses likely will be issued ("quota" licenses are so-called because the license is issued on a ratio of one license for every 1,300 people in the population).

As the Senate Fiscal Agency analysis of the 1998 amendment to the code (which allows for voluntary programs to train liquor servers) says, in part, "There has long been considerable public concern regarding alcohol abuse and drunk driving. According to Mothers Against Drunk Driving (MADD), a majority of American fear drunk driving more than any other highway safety problem . . . 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 [liquor] 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[n intoxicated] 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 disbursement."

Although the Liquor Control Commission reports that as of this date no "responsible vendor" certificates have been issued under the new program, there reportedly currently are at least three programs in Michigan – the TAM and TIPS programs and a third program called "Barcode" – that are likely candidates to qualify as "server training programs" under the Liquor Control Code. Eventually, it may even be the case that all liquor servers will be trained under one of these or a similar

program, which can only help both the licensed beverage industry and the general public as a whole.

Response:

The bill, like the underlying section of the Liquor Control Code added in 1998, has some unclear provisions that should be clarified. For example, although the bill (and the code) makes repeated reference to "on premises" licensees and "on premises" licenses, neither of these terms is defined in the bill or the code. Failure to define these terms leaves it statutorily less than clear who would fall under the bill's provisions. Rather than leaving the definition implied, it ought to be specified in the code.

Furthermore, like the section adding the "responsible vendor" designation to the code two years ago, the bill would allow the Liquor Control Commission to adopt "the existing standards and programmatic framework of private entities" and to "delegate nondiscretionary administrative functions to outside private entities," but neither the existing language in the code nor the language proposed in the bill specify to what end the commission can or could take these actions.

Finally, the bill also would require "an on premises licensee" to keep a copy of the "responsible vendor designation or proof of completion of server training on the licensed premises" (in order to facilitate the verification of such designation by the commission or its agent or by law enforcement officers), but the code does not require all "on premises" licensees to *be* designated as a "responsible vendor" or to *have* "server training," and the bill would not require this either. Although this requirement is contained in the subsection added by the bill that initially refers to new "on premises" licensees (or transferees), the actual language of the requirement refers only to "on premises" licensees, not new licensees. The requirement should be clarified to ensure that existing "on premises" licensees could not be penalized for violating this new requirement.

Against:

Representatives of the restaurant industry expressed a concern that, given the current tight labor market, it might be difficult to meet the bill's requirement that a supervisor who had successfully completed the code's server training program be on-site at all times. If supervisory staff who had completed the training program went on vacation or quit, it could be hard for some restaurants to meet this requirement. Since the bill would allow the Liquor Control Commission to impose liquor license sanctions (including suspension or revocation) on violators, the bill could have potentially serious financial implications for restaurants that, through no fault of their own, lost certified supervisory staff either temporarily or permanently and, as a result, had their liquor licenses suspended or revoked.

Response:

First, the bill would apply only to new "on premises" licenses or transfers of more than half interest in existing "on premise" licenses, which narrows the number of restaurants that might be affected under the bill. Moreover, given that Public Act 391 of 1998 established a "responsible (liquor) vendor" program that includes a server training program, applicants for new liquor licenses could, as a part of their business planning, make sure that enough of their supervisory staff to be hired had the necessary certification.

For:

The bill would help the new commercial casinos in Detroit by allowing liquor licensees to be exempted, under certain circumstances, from the automatic license suspensions or revocations currently required under the Liquor Control Code when a liquor licensee accumulates three or more violations within a 24-month period for illegally providing minors with alcoholic liquor. Although a casino operator is not required to have a liquor license in order to operate a casino, the administrative rules issued under the Michigan Gaming Control and Revenue Act do require that if a casino does plan to serve alcoholic beverages, it have an appropriate liquor license. (See BACKGROUND INFORMATION.) Moreover, the act itself requires casinos to report annually to the Michigan Gaming Control Board the number of minors who were detected illegally consuming alcohol on the casino premises, a requirement that is not imposed on other liquor licensees.

Apparently, the Detroit casinos anticipate that, despite the casinos' best efforts, minors inevitably will manage to gain access to alcohol in the casinos, subjecting the casinos to the possibility of losing their liquor licenses. Though the Michigan Gaming and Control Act's self-reporting requirement does not require casinos to report liquor violations involving minors to the Liquor Control Commission, this information would be readily available in the annual report required from the Michigan Gaming Control Board. And although a commercial casino is not legally or administratively required to have a liquor license in order to obtain a casino license, practically speaking, the inability to serve alcohol would virtually force a casino to close. To prevent this enormous financial loss in what reportedly is a billion-dollar-a-year business, the bill would exempt any liquor licensee (not just the commercial casinos holding liquor licenses) from the

Liquor Control Code's automatic suspension or revocation of their license for illegally serving minors if the licensee reported the violation to the "appropriate law enforcement agency immediately upon discovery," thereby effectively giving the Liquor Control Commission discretion that it otherwise currently lacks under the Liquor Control Code.

Response:

The Senate amendment to section 906 of the Liquor Control Code could effectively repeal current law, which requires license action by the Liquor Control Commission whenever a liquor licensee sells alcohol to minors three or more times in 24 months. Although the code also *allows* the commission to take liquor license actions upon a first violation of the code's requirements, clearly the legislature has indicated that – by its "three strikes" provision in the code – it desires the commission to take license action when a liquor licensee repeatedly sells alcohol to minors. And even if a case could be made for exempting from this provision commercial casinos, with their extraordinary volume of liquor sales compared to other liquor licensees in the state, it still remains questionable whether liquor licensees doing much smaller volumes of business should be automatically exempted from license action so long as they self-reported illegal sales of alcohol to minors.

It is not clear what is meant by the phrase "appropriate law enforcement agency." The amendment also fails to define "discovery," thereby making the practical application of the phrase "immediately upon discovery" unclear. Would "discovery" of an illegal sale of liquor to a minor include notification of the licensee by the Liquor Control Commission of a license hearing based on a report by a third party of an illegal sale, thereby effectively repealing this provision of current law? Further, would the proposed exemption exempt one party to an illegal sale of alcohol to a minor (namely, the licensee) from penalty while continuing to penalize the other (namely, the minor in question)? If so, this hardly seems fair. If the offending minor is to be legally punished, surely the liquor licensee involved in the illegal transaction ought also to face legal sanctions.

Finally, current law requires that casinos report the number of minors who were detected illegally consuming alcohol on the casino premises only to the Gaming Control Board, but it does not require that casinos self report these violations to the Liquor Control Commission. And while the law requires the Gaming Control Board to forward the casinos' self-reporting of such violations to the governor and the legislature, it does not require notification of the Liquor Control Commission. Shouldn't the commission be included in any required reports of Liquor Control Code violations?

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#This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.