

Legislative Analysis



LIQUOR CODE REVISIONS

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House Bill 4684 as introduced
Sponsor: Rep. Frank Accavitti, Jr.
Committee: Regulatory Reform

First Analysis (6-12-07)

BRIEF SUMMARY: The bill would refer to persons in a "visibly intoxicated condition" instead of "intoxicated condition," incorporate several departmental rules into statute, and then rescind those rules.

FISCAL IMPACT: There is no fiscal impact on the State of Michigan or its local units of government.

THE APPARENT PROBLEM:

Provisions of the Michigan Liquor Control Code commonly known as the "Dram Shop Act" generally prohibit sales and service of alcohol to visibly intoxicated individuals and allow a person injured by a visibly intoxicated individual to bring a civil suit against the liquor licensee who last served the individual. Liquor licensees are required to obtain a bond or a policy of liquor liability insurance that provides security for liability in the event a person sues after suffering damages or injuries from a visibly intoxicated person. Serving a visibly intoxicated person can also result in administrative sanctions, including license suspension, and loss of the required liability insurance.

However, several other provisions in the liquor code and departmental rules prohibit sales and service of alcohol to "persons in an intoxicated condition" and prohibit allowing an individual in an intoxicated condition to loiter on the licensed premises; administrative sanctions can also be imposed for violations of these provisions.

Some would argue that these terms are not interchangeable, as a person who is intoxicated as measured by bodily alcohol content (BAC) may or may not show visible signs of intoxication. According to an association representing liquor licensees, the level of vagueness created by the use of the two terms in the code and rules has led to many businesses being cited simultaneously for serving a visibly intoxicated individual and an individual in an intoxicated condition, as well as an additional complaint of allowing that individual to loiter on the premises – all for the same incident. Often the complaint is filed by a police officer after making a traffic stop. If a driver fails a breathalyzer test, the driver is often asked where he or she just came from and a complaint against the establishment named is filed with the Liquor Control Commission (LCC), often with no further investigation as to the facts of the case. Reportedly, business owners have incurred thousands of dollars in legal fees fighting such charges, with about one-quarter to one-third of such complaints being dismissed by the LCC.

The association feels that since the Dram Shop Act attaches liability to the liquor licensee based on behavior that is visible, that visible intoxication should be the threshold for all administrative actions, also. It is believed that this approach would reduce the number of unfounded complaints against licensees. The Liquor Control Commission, on the other hand, believe that some situations warrant keeping both terms.

THE CONTENT OF THE BILL:

The bill would amend the Michigan Liquor Control Code (MCL 436.1707 et al.) to incorporate into the statute several departmental rules that describe prohibited activities on the part of licensees and/or their employees. It would then rescind those rules. This means that these provisions would now be part of the statute and would not be found in department rules.

The bill also would refer to persons in a "visibly intoxicated condition" instead of "intoxicated condition" in the incorporated rules and other existing provisions, and use the term "alcoholic liquor" instead of "alcohol" in several provisions.

The bill would place into the code the following departmental rules and then rescind the rules:

R 436.1005: selling, serving, or furnishing alcoholic liquor to visibly intoxicated person prohibited; allowing visibly intoxicated person to consumer liquor on premises prohibited; licensee, agent, or employees being in visibly intoxicated condition prohibited; permitting visibly intoxicated person to frequent or loiter on licensee's premises prohibited.

The bill would clarify that a prohibited activity would be in regards to a "visibly" intoxicated person or a person in a "visibly" intoxicated condition.

In addition, R 436.1005(4) currently prohibits a licensee from allowing an intoxicated person to frequent or loiter on the licensed premises. Besides applying this prohibition to a "visibly" intoxicated person, the bill would create an exception. A licensee could allow a visibly intoxicated person to remain on the premises if he or she has been refused service of further alcoholic liquor and continues to remain on the premises for the purpose of eating food, seeking medical attention, arranging transportation that does not involve driving himself or herself, or any other circumstances where requiring the person to vacate the premises immediately would be considered dangerous to that person or to the public.

R 436.1009: allowing person under 21 years of age (minor) to consume liquor on premises prohibited; allowing person less than 18 to sell or serve liquor prohibited; allowing person less than 18 to work or entertain on a paid or voluntary basis on premises prohibited unless exempted.

R 436.1013: gambling and gambling devices prohibited.

R 436.1017: prohibited sales of alcoholic liquor.

R 436.1033: prohibited sale, possession, or consumption of alcoholic liquor not purchased from the commission or authorized licensee; exemption for hotels and for members of licensed clubs.

ARGUMENTS:

For:

The Dram Shop Act provisions of the Liquor Control Code hold a liquor licensee, and his or her employees, liable for serving a visibly intoxicated person. A violation can result in a civil suit and/or administrative sanctions. Server training programs teach managers and servers how to recognize signs of intoxication. Obviously, a licensee or server who knowingly continues to serve a person showing signs of intoxication should be subject to administration actions. However, these individuals can also face administrative sanctions for serving an intoxicated individual. Under these provisions, it would seem that the code is requiring staff to intuit that someone is drunk despite a lack of outward signs such as slurred speech, stumbling gait, or other behaviors associated with intoxication.

The result is that a significant number of frivolous complaints are being filed by law enforcement officers, and that a significant number of businesses are spending thousands of dollars per complaint to fight the allegations. Often these complaints are filed without further investigation on the part of law enforcement to determine if the person had exhibited signs of intoxication at the bar or restaurant named in the complaint. Reportedly, about one-quarter to one-third of such complaints result in dismissal.

The bill would address the problem by using consistent terminology throughout the liquor statute. There should be one threshold for liability to attach, and that should be focused solely on what is apparent, or visible, to the licensee or employee. To do otherwise penalizes a person for doing something he or she is unaware of doing. Changing the law shouldn't jeopardize legitimate cases, but should reduce the number of complaints that are unfounded.

For:

The bill would create an exception to a prohibition currently in departmental rules (but that would be incorporated into the statute) that specifies an intoxicated person is not to be allowed to loiter on the licensed premises. The bill would allow specific situations under which a visibly intoxicated person could remain in a bar or restaurant, such as during the time it takes to eat a meal or arrange for transportation home. In many cases, such an approach would be safer for the public and for the individual than pressuring an establishment to force an obviously intoxicated person to leave immediately.

Response:

It would be hoped that a liquor establishment wouldn't attempt to keep a visibly intoxicated person on the premises for the sole purpose of "sobering up" to avoid a complaint of over-serving alcohol should that person leave and be stopped by the police.

Against:

The liquor code should be left as is. The Liquor Control Commission needs to retain the ability to cite for serving both visibly intoxicated persons and persons in an intoxicated state. It can be difficult to prove that a licensee ignored visible signs of intoxication and continued to serve a person. In those situations, a high BAC (bodily alcohol content) can establish that a violation of the law did occur. For example, several years ago, a young man died of alcohol poisoning after consuming over 21 drinks in a short amount of time on his 21st birthday. Since his friends were buying the drinks at the bar and bringing them to him, wait staff claimed not to have seen visible signs of intoxication, even though they were aware of the large number of drinks taken to his table. The LCC was able to successfully sanction the licensee based on the high level of alcohol in the young man's blood, over triple the legal limit.

Also, persons who regularly consume alcohol often learn to disguise signs associated with intoxication. For example, the person may point to his or her glass or tap the counter next to the glass for a refill rather than risk having words slurred. Yet, a responsible server knows the approximate number of drinks in relation to food consumption that generally places a person in a state of intoxication and can cut off service regardless of visible signs. A licensee who allows a person to be served a large number of drinks in a short period of time should be cited even if the person shows no outward signs, if a breathalyzer verifies that the person was intoxicated.

POSITIONS:

A representative of the Michigan Licensed Beverage Association testified in support of the bill. (5-15-07)

The Michigan Restaurant Association indicated support for the bill. (5-15-07)

The Michigan Liquor Control Commission is neutral on the bill. (5-15-07)

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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.