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SFA



BILL ANALYSIS

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Senate Bill 1401 (as enrolled)
Sponsor: Senator Phillip Hoffman
Senate Committee: Transportation and Tourism
House Committee: Regulatory Reform

PUBLIC ACT 725 of 2002

Date Completed: 1-6-03

RATIONALE

The Michigan Liquor Control Code prohibits selling or furnishing alcohol to a minor, and provides for the punishment of anyone found to be engaging in this activity. As a rule, a violation is a misdemeanor punishable by a fine, imprisonment, or both. Additionally, if a retail liquor licensee commits three or more violations within a 24-month period, the license can be suspended or revoked. Though the Code already provides for the punishment of anyone facilitating a minor's access to alcohol, it is often the case that only the liquor licensee is held responsible. Some people believe that the Code should specify that a liquor licensee cannot be charged with a violation unless the licensee's clerk, agent, or employee who sold the alcohol also is charged.

In another matter, a problem involving alcohol sales in a motorsports entertainment complex came to light two years ago. Motorsports entertainment is traditionally associated with certain practices on the part of fans, such as making a weekend out of an event and camping out, as well as bringing alcohol purchased from an off-premises retailer into the arena or racetrack. In a particular case, a management group owned a racetrack for over 20 years but did not possess a liquor license. An independent vendor held the liquor license and sold alcohol within the arena. The Michigan Liquor Control Code, however, does not allow licensees both to sell alcohol and to permit customers to bring alcohol with them. The vendor at this racetrack was allowed to sell alcohol for many years because it was not technically the owner of the track. When the owner sold the racetrack and the vendor attempted to

transfer the liquor license to the new owner, it became clear that the track could no longer engage in both practices. The track was given a one-year grace period in which it could still sell alcohol and allow people to bring their own, but in the summer of 2001, the owner chose not to sell alcohol at the track. To accommodate this type of situation, it was suggested that a motorsports entertainment complex should be allowed both to sell alcohol and to permit race fans to bring their own alcohol into the complex.

CONTENT

The bill amended the Michigan Liquor Control Code to do the following:

- **Revise penalties for the sale or furnishing of alcohol to minors.**
- **Provide that action may not be taken against a licensee unless action also is taken against the clerk, agent, or employee who sold or furnished alcohol to a minor.**
- **Permit members of the general public to bring alcohol not purchased at a motorsports entertainment complex into the complex, and possess and consume that alcohol, under certain circumstances.**
- **Allow the Michigan Liquor Control Commission (MLCC) to issue additional resort licenses in 2003 and 2004.**

The bill also refers to the Eastern Michigan University "convocation center", rather than the "Hoyt conference center", which is considered a university-owned conference center and may sell

alcohol.

Sales to Minors

Under the Code, a retail licensee or a retail licensee's clerk, agent, or employee who knowingly sells or furnishes alcohol to a minor is guilty of a misdemeanor punishable by imprisonment for up to six months and/or a fine of up to \$500. Under the bill, if the violation is the result of an undercover operation directed by the State Police, a local police agency, or the MLCC, the retail licensee's clerk, agent, or employee is responsible for a State civil infraction and may be fined not more than \$100. A violator who is not a retail licensee or a licensee's clerk, agent, or employee is guilty of a misdemeanor punishable by a maximum fine of \$1,000 and imprisonment for up to 60 days for a first offense, or a maximum fine of \$2,500 and imprisonment for up to 90 days for a subsequent offense, and may be ordered to perform community service. (Previously, the fine amounts were mandatory.)

Under the Code, if the enforcement agency involved in the violation is the State Police or a local police agency, the retail licensee may not be charged with a violation, and the MLCC may not suspend or revoke the licensee's license, unless enforcement action also is taken against the minor and, if applicable, against the person 21 years of age or older who sold or furnished the alcohol to the minor. Under the bill, enforcement action also must be taken against the retail licensee's clerk, agent, or employee.

Motorsports Complex

The bill provides that, for seven consecutive days or less during which public access is permitted to a motorsports entertainment complex in connection with a motorsports event, members of the public at least 21 years old may bring alcoholic beverages not purchased at the complex into the complex. Possession and consumption of the alcohol are allowed in the portions of the complex that are open to the general public, and that also are part of the licensed premises of a retail licensee, only under both of the following circumstances: The licensed premises are located within the motorsports entertainment complex, and the retail licensee holds a license for consumption on the licensed

premises of the motorsports entertainment complex.

The retail licensee is subject to the civil liability provisions of Section 801 of the Code, if a civil action is brought by or on behalf of an individual who suffers damage or is personally injured by a minor or visibly intoxicated person by reason of the unlawful consumption of liquor on the licensed premises by the minor or visibly intoxicated person, if the unlawful consumption is proven to be a proximate cause of the damage, injury, or death of the individual, regardless of whether the liquor was sold or furnished by the licensee or was brought onto the licensed premises as allowed under the bill. (Section 801 provides for a private cause of action against a person who unlawfully sold or furnished alcohol to a minor or visibly intoxicated person. If the court or jury finds that intoxication was a proximate cause of the damage or injury, the plaintiff has the right to recover actual damages of at least \$50.)

The bill defines "motorsports entertainment complex" as a closed-course motorsports facility and its ancillary grounds that meets all of the following requirements:

- Has at least 70,000 fixed seats for race patrons.
- Has at least seven scheduled days of motorsports events each calendar year.
- Has at least four motorsports events each calendar year.
- Serves food and beverages at the facility during sanctioned events each calendar year through concession outlets, a majority of which are staffed by individuals who represent or are members of one or more nonprofit civic or charitable organizations that directly financially benefitted from the concession outlets' sales.
- Engages in tourism promotion.
- Has located on the property exhibitions of motorsports history, events, or vehicles.

The bill defines a "motorsports event" as a motorsports race and its ancillary activities that have been sanctioned by a sanctioning body. The bill defines "sanctioning body" as the American Motorcycle Association (AMA), the Auto Racing Club of America (ARCA), the Championship Auto Racing Teams (CART), the Grand American Road Racing Association (Grand AM), the Indy Racing League (IRL),

the National Association for Stock Car Auto Racing (NASCAR), the Nation Hot Rod Association (NHRA), Professional Sportscar Racing (PSR), the Sports Car Club of America (SCCA), and the United States Auto Club (USAC), or any successor organization or any other nationally or internationally recognized governing board of motorsports that establishes an annual schedule of motorsports events and grants rights to conduct them, that has established and administers rules and regulations governing all participants involved in the events and all people conducting them, and that requires certain liability assurances, including insurance.

Resort License; Resort-Area Hotel

As previously allowed for 2001 and 2002, the bill allows the MLCC to issue the following additional liquor licenses, regardless of the Code's population quota, in 2003 and 2004: up to 10 additional resort licenses per year, including one to an applicant in a rural area with an above-average poverty or unemployment rate; 20 resort economic development licenses; and 10 specially designated distributor licenses.

The Code states that, upon local legislative approval, an on-premises escrowed license may be transferred to an applicant proposing to operate within the local governmental unit in the county in which the escrowed license is located, if the county has a population of under 500,000 or over 700,000. Under the bill, an applicant for an on-premises resort or resort economic development license must verify that he or she attempted to secure an on-premises escrowed or quota license and, to the best of the applicant's knowledge, in a county with a population of 500,000 to 700,000, such a license is not readily available within the local governmental unit in which the applicant proposes to operate. (Previously, this requirement applied regardless of the county's population.) In a county with a population under 500,000 or over 700,000, the bill requires the applicant to verify that an on-premises escrowed or quota license is not available in that county.

The bill specifies that nothing in the Code or the rules promulgated under it prevents a class A or B hotel in a resort area from allowing its invitees or guests to possess and consume, and enter and exit the premises

with, alcohol purchased from an off-premises retailer.

With certain exceptions, the Code prohibits a vendor from giving away alcohol in connection with his or her business. Under the bill, this does not apply to a class A or B hotel in a resort area, if the hotel gives alcohol to a guest or invitee in connection with a business event or as part of a room special or promotion for overnight accommodations.

MCL 436.1513 et al.

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

As a person over the age of 21, a clerk, agent, or employee can be held responsible for providing alcohol to a minor under the current law. What often happens, however, is that the licensee is the only entity charged and must pay court costs, risk losing the license, or even serve time in prison. This practice is not fair to licensees, especially if they own large establishments where it is difficult to supervise every employee all the time, and where an employee might be intentionally selling alcohol to an underage friend. Many, if not most, licensees do follow the law and invest a lot of time and money in training their employees to understand the importance of restricting the availability of alcohol to minors. Therefore, if an employee knowingly chooses to violate the law, he or she should bear some liability. Charging the licensee, the minor who purchased or attempted to purchase the alcohol, and the clerk who sold the alcohol to the minor, will send a clear message that the effort to curb underage drinking and the problems associated with it must involve all parties.

The reduced consequences this bill offers for selling alcohol to a minor involved in a sting operation are fairer than the standard penalty, since a sting deliberately creates an opportunity for an employee to sell to a minor, when the employee might not ever be faced with such a situation otherwise. Holding the employee responsible for a civil infraction

rather than a misdemeanor still provides a punishment but is more appropriate when a potential sale is set up.

Supporting Argument

The purpose of a resort license is to fill a unique need in a given area. If there are already enough licenses granted under the general quota system, the necessity of extra resort licenses is questionable. Granting these special licenses can hurt the local economy. Licensees have to pay more for a liquor license under the quota system and therefore are subsidizing special resort licenses, which may be obtained by large corporations and restaurant chains. This can suppress competition from local businesses, which are not in a position to bear the disproportionate cost placed on them for serving liquor. By requiring applicants to secure a quota license or an escrowed license within their county (rather than just within their local governmental unit) before applying for a new resort or resort economic development license, the bill allows for a more careful consideration of whether an extra license is needed in a given area and will stem the automatic creation of licenses.

Supporting Argument

Allowing fans to bring their own alcohol to events is a longstanding tradition of motorsports entertainment. At the particular racetrack that prompted the amendment, this practice had been going on for many years and had become part of the overall experience of attending these events. By allowing the sale of alcohol on the licensed premises of a motorsports entertainment complex, the bill will help ensure that fans continue to attend racing events there and have a good time.

Opposing Argument

The bill reduces penalties for people who are not retail liquor licensees or employees. The previous law stated that anyone over the age of 21 who provided alcohol to a minor had to be fined \$1,000 and could be imprisoned for up to 60 days for a first offense. Under the bill, a violator *may* be ordered to pay a fine of not more than \$1,000 and may be imprisoned for up to 60 days. A subsequent offense had been punished by a fine of \$2,500 and up to 90 days in prison; the bill changed this to a fine of not more than \$2,500 and up to 90 days in prison. This means that a court will have considerable discretion in imposing a fine and ordering imprisonment, if it chooses to do so at all. These relaxed penalties contradict the trend of cracking down on underage drinking and minimize the

seriousness of the issue.

Legislative Analyst: Julie Koval

FISCAL IMPACT

The bill will have no fiscal impact on State or local government.

Fiscal Analyst: Maria 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.