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BILL ANALYSIS

Senate Fiscal Agency

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MICHIGAN STATE LAW LIBRARY

Senate Bill 1074 (as reported without amendment)
 Sponsor: Senator Gilbert J. DiNello
 Committee: Regulatory Affairs

Date Completed: 9-25-90

RATIONALE

Generally, the dramshop Act creates a cause of action against a liquor establishment for an individual who is injured or suffers damage by a minor or a visibly intoxicated person as a result of the illegal sale of alcohol to the minor or visibly intoxicated person, if the illegal sale is proven to be a proximate cause of the damage, injury, or death. Until it was amended in 1986, the Act did not address the ability of the intoxicated person or minor to sue, but the courts had consistently applied a "noninnocent party doctrine"; that is, "...the intoxicated person himself and those who contributed to his intoxication have no right of action under the act" (*Craig v Larson*, 432 Mich 346 (1989)). As part of the 1986 amendments to the Act, the Legislature codified that doctrine, prohibiting suits under the Act by the "allegedly visibly intoxicated person". In other sections of the Act, however, including the section that allows an injured person to sue, the language refers to a visibly intoxicated person or minor. As a result, the Michigan Court of Appeals recently held that, "[T]he proper interpretation of the dramshop act, as constituted in the 1986 amendment, provides that illegally served minors may maintain an action against the dramshop" (emphasis added). According to the Court, "...the Legislature specifically defined two separate categories of persons to whom liquor licensees could not furnish alcoholic beverages: 'minors' and 'visibly intoxicated persons'; therefore, 'the single reference to visibly intoxicated persons in subsection (10) [which codified the noninnocent party doctrine] reflects an intent by the Legislature to specifically exclude minors from the provisions of that subsection" (*LaGuire v Kain*, Docket No. 115325, August 22, 1990). Some people believe that this

decision has pointed out, or created, a loophole that should be closed.

CONTENT

The bill would amend the dramshop Act to preclude lawsuits under the Act by minors who were illegally sold alcohol and as a result caused damage or personal injury. The bill specifies that an allegedly visibly intoxicated person "or a minor" would not have a cause of action under the Act, and that a person would not have a cause of action under the Act for the loss of financial support, services, gifts, parental training, guidance, love, society, or companionship of the allegedly visibly intoxicated person "or minor".

MCL 436.22

FISCAL IMPACT

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

ARGUMENTS**Supporting Argument**

The bill would close a legal loophole that was brought to light by the Court of Appeals in *LaGuire v Kain*. For several decades, according to the Michigan Supreme Court in *Craig v Larson*, the dramshop Act was judicially construed as precluding lawsuits by the intoxicated person, and this interpretation prevailed in the *Craig* decision itself, in which the Supreme Court rejected a suit brought by a minor who had contributed to the defendant-minor's intoxication. Although the decision in

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LaGuire would appear to conflict with Craig (as well as with other Court of Appeals decisions), the appellate court in LaGuire found the Craig decision unpersuasive, and pointed out that Craig involved facts that pre-dated the Act's 1986 amendments. As a result, the Court of Appeals, applying rules of statutory construction, has expanded dramshop liability, and injured minors now may sue the "dramshop" that illegally served them. The bill would close this loophole and statutorily apply the noninnocent party doctrine to minors.

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