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REQUIRE LIQUOR SERVER TRAINING FOR NEW "ON PREMISES" LICENSES

House Bill 5668 (Substitute H-1) First Analysis (5-18-00)

Sponsor: Rep. Michael Green
**Committee: Employment Relations,
Training and Safety**

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 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.

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 from issuing new "on-premise" liquor licenses (see BACKGROUND INFORMATION), or from transferring more than 50 percent interest in an existing "on-premise" license, unless the applicant met certain minimum personnel training requirements. The bill also would require the commission to approve the establishing of a "server

training program" for all such applicants, as well as any existing retail licensees it thought needed such training.

Certified supervisors. The bill would amend this part of the code to prohibit the commission, beginning July 1, 2001, with certain exceptions, from issuing a new "on-premise" license or from transferring more than 50 percent interest in an existing "on-premise" license unless the applicant or transferee could prove that he or she had supervisors who had successfully completed a (liquor) server training program under the code and who were present on the licensed premises on each shift and during all hours when liquor was served.

Similarly, the bill would require the following licensees to have employed or present on the licensed premises, at a minimum, supervisory personnel who had successfully completed a server training program on each shift and during all hours in which alcoholic liquor was served:

- an "on premises" licensee whose license was issued on or after July 1, 2001;
- a "transferee" of more than 50 percent interest in an "on premises" license if the transfer was on or after July 1, 2001; or
- an "on premises" licensee whom the commission had determined to be in need of training due to the frequency or types of violations of the code involving the serving of alcoholic liquor.

Someone enrolled and actively participating in a server training program could be considered to have "successfully completed" the program so long as they were participating in the program. The commission also could allow an applicant or a "conditionally approved" licensee at least 180 days (more, upon a showing of good cause) to meet the bill's minimum personnel training requirements. If a "conditionally approved"

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licensee failed to comply with the bill's requirements, the commission could suspend his or her license.

The commission could waive the bill's 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.

Responsible vendor designation. The bill would exempt "special licenses" from the code's current requirement that the Liquor Control Commission establish a program in which it designates certain retail licensees as "responsible vendors." (A "special license" is issued only to nonprofit organizations and for limited periods of time.)

An "on premises" licensee would be required to keep a copy of the "responsible vendor" designation or proof of completion of server training on the licensed premises to facilitate the verification of the designation by the commission, its agent, or law enforcement officer. A licensee who the commission had determined had violated this requirement would be subject to having his or her license revoked or suspended or could be fined up to \$300 (under the penalties of section 903 of the code), but a violation of this provision would not be a misdemeanor violation of the code under section 909.

Server training programs. The bill would amend the code to require the Liquor Control Commission to approve the establishing of a server training program designed for all new "on premises" licensees or transferees of more than a 50 percent interest on an "on premises" license on or after July 1, 2001, and for any retail licensees the commission determined to be in need of training due to the frequency and types of violations of the code involving the serving of alcoholic liquor. This provision would not apply to special licenses (which are issued only to nonprofit organizations, see BACKGROUND INFORMATION below), but the bill would allow the commission to require server training for certain special licenses based on the size and nature of the licensed event. As already is the case with regard to the commission's designation of "responsible vendors," the commission could, in approving the establishment of server training programs, adopt the existing standards and programmatic framework of private entities and could delegate nondiscretionary administrative functions to outside private entities.

MCL 436.501 and 436.1906

BACKGROUND INFORMATION:

"On premises" licenses. Although the Liquor Control Code does not explicitly define "on premises" license, the term seems clearly to refer to places licensed under the code where alcoholic liquor is consumed on the premises, rather than bought to be consumed elsewhere. Though the code does not explicitly specify which licensed locations would 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, though not the specific kind of premise).

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."

The term "on-premise license," then, presumably would refer to 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,” which the code defines 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,” and which the administrative rules specify “authorizes a person to sell alcoholic liquor at retail for consumption on the premises for a limited period of time.” (R 426.572)

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 code defines the “administrator,” who is to offer server training programs to retail licensees, 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 this section [section 906] and to certify to the commission that those persons meet the requirements of this section.”

FISCAL IMPLICATIONS:

Fiscal information is not available.

ARGUMENTS:

For:

The bill would make mandatory, for certain retail, “on premises” liquor licenses, the permissive liquor server training currently allowed under the recent amendment

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 Public Act 391 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. For example, although the bill (and the code) makes repeated reference to “on premises” licensees and “on premises” licenses, the fact that neither of these terms is defined in the bill or the code leaves it statutorily less than clear who would fall under the bill’s provisions. 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. 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. Surely only those “on premises” who had obtained such designation or server training, or those who would, under the bill, be required to do this, should be required to keep such documentation on their premises.

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.

POSITIONS:

The Michigan Licensed Beverage Association supports the bill. (5-17-00)

The Michigan Liquor Control Commission has no position on the bill. (5-17-00)

The Michigan Restaurant Association has no position on the bill. (5-17-00)

Analyst: S. Ekstrom

■ 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.