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SFA**BILL ANALYSIS**

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Senate Bill 494 (as passed by the Senate)
Sponsor: Senator Michael J. Bouchard
Committee: Local, Urban and State Affairs

Date Completed: 9-4-97

RATIONALE

Shopping malls and enclosed shopping centers have become places where children and teenagers go to eat, shop, and meet their friends. While many youngsters are responsible patrons, some owners of malls and shopping centers have experienced incidents of youths' gathering in large groups, roaming the common areas of a mall or shopping center, and intimidating other patrons. Some people believe that owners of malls and enclosed shopping centers should be able to establish policies that regulate the conditions under which minors may be present.

CONTENT

The bill would amend the Elliott-Larsen Civil Rights Act to specify that the Act would not prohibit an enclosed mall or enclosed shopping center from enforcing a rule or policy that prohibited a minor less than 16 years of age from being present in an enclosed shopping center or enclosed shopping mall after 6 p.m. on Friday or Saturday, unless that minor was a parent or was accompanied by a parent or another individual 19 years of age or older. The bill specifies that this provision would not apply to a movie theater. A rule or policy adopted under the bill would have to be posted at the entrance of the enclosed mall or enclosed shopping center at least 10 days prior to enforcement, and remain posted throughout the period of time that the rule or policy was in effect.

(The Act prohibits the denial to an individual of the full and equal enjoyment of a public accommodation or public service because of religion, race, color, national origin, age, sex, or marital status.)

MCL 37.2302

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

Many malls and enclosed shopping centers across the State are considered to be sources of entertainment for young people who often gather at these retail centers to socialize with their peers, as well as to shop. Some general managers of these facilities reportedly have to disband large groups of youths who roam the mall or shopping center, exhibit loud behavior, and intimidate other customers. Although private security personnel, employed by the retail centers, attempt to break up the groups, the young people often recongregate. If these groups become disorderly, the private security officers, or a local police officer, may be called to escort the unruly youths out of the mall or shopping center. In other cases, parents or guardians drop off their youngsters at a mall or shopping center where they stay for long periods of time without adult supervision. Thus, mall and shopping center employees often must act as babysitters. Furthermore, if one of these youngsters becomes sick or is injured, retail personnel may be hampered in their response because the child's parent or guardian is not present. Because of the growing presence of unsupervised youths, many owners of malls and shopping centers have taken steps to ensure the safety of all shoppers. For example, some mall managers rely on their local police to augment the mall's security forces during peak shopping periods. Despite these efforts, retail centers still find it difficult to control the behavior of unruly young people. The bill would give mall and shopping center managers a tool to regulate access to these facilities in an attempt to provide a safe and pleasant shopping experience for all patrons.

Opposing Argument

The Elliott-Larsen Civil Rights Act was designed to protect citizens against blanket discrimination based on unavoidable, individual criteria, such as

age, race, and gender. The bill would exclude from these protections all minors up to 16 years of age by permitting malls or shopping centers to restrict from their premises minors in this age group, unless they were accompanied by a person who was at least 19 years of age. This restriction would be based solely on age. Thus, a group of 15-year-olds could be barred from shopping at a mall during certain hours, even though these individuals may not have previously misbehaved while at the mall. This type of restriction is discriminatory and may be unconstitutional.

Opposing Argument

It is not necessary to provide for an exemption in the Civil Rights Act. Malls and enclosed shopping centers are private property, not publicly owned or operated facilities. Consequently, their owners have the authority to determine how the property should operate, which includes establishing regulations for persons who visit the facilities. Some convenience stores, for example, have established “no shirts, no shoes, no service” policies to ensure that patrons are properly attired before they enter a store. The Mall of America, near Minneapolis, reportedly has set a curfew for young persons and established a parent brigade made up of volunteers who check the identification of young persons seeking to enter the mall. Furthermore, the Code of Criminal Procedure permits a merchant, an employee of a merchant, or an independent contractor providing security for a merchant to arrest a person believed to have committed retail fraud, regardless of whether the alleged act took place in the presence of the person making the arrest. The Code also permits a private person to arrest someone committing a felony. Thus, owners of malls and shopping centers in this State currently have several options available to respond to persons who cause problems at their facilities.

Response: While mall and shopping center owners may establish regulations that apply to all persons who patronize their stores, they might be subject to charges of discrimination if they establish policies aimed at a specific group of persons. By specifying that the Elliott-Larsen Civil Rights Act would not prohibit this type of regulation, the bill would allow these owners to address problems at their facilities that are caused by patrons of a certain age group.

Opposing Argument

The bill as originally introduced would have permitted local governments to enact and enforce laws prohibiting a minor under 16 from being present in shopping centers or malls during certain hours of operation unless that minor was

accompanied by an adult. The bill as passed by the Senate would permit mall and shopping center owners to establish this type of regulation, without any governmental involvement. While either approach would permit a shopping facility to restrict minors’ access, the enactment of a local ordinance would give the public an opportunity to respond to a proposed regulation through public hearings. Under the current version of the bill, however, the public would not have this opportunity. Moreover, many local governments have enacted ordinances to address disorderly conduct and loitering as well as harassment of individuals, according to the Michigan Municipal League. In addition, many communities have set curfews for minors and regulate minors’ access to certain facilities. For example, Lansing and Royal Oak enforce curfews for certain minors, and Hamtramck enacted an ordinance not only establishing a curfew but also regulating minors’ access to certain amusement facilities, such as theaters, bowling alleys, and pool halls. An ordinance in Farmington specifically prohibits a person from standing or idling in any shop, store, business, or commercial establishment if that activity interferes with or causes the disorder of the normal course of business. Under a parental responsibility ordinance, Brighton makes it unlawful for a parent or guardian to permit a minor under 17 to idle or congregate in specified locations, including commercial establishments and premises, between certain hours. If mall and shopping center owners want to regulate a minor’s access to these facilities, they can seek the help of their local governments, where an ordinance addressing this problem would be subject to review by the local community.

Response: Even though many communities have local ordinances regulating disorderly behavior, police officers often are unable to take any action against the alleged violators because the officers do not witness the activity and, by the time the officers arrive at the scene, the minors have dispersed or left the mall or shopping center. Furthermore, the bill, as passed by the Senate, would require a rule or policy restricting the access of minors to a mall or shopping center to be posted at the entrance to the facility at least 10 days before enforcement and remain posted while the rule or policy was in effect. Thus, patrons of these facilities would be notified of the new policy.

Opposing Argument

It is not clear how the bill would be enforced. Some people are concerned about how security personnel would determine the age of a patron, since many minors do not carry identification cards specifying their date of birth. In addition, questions have been raised about how someone would

determine whether the minor was a parent, and why minors who are parents would be considered more responsible patrons than minors who are not parents. Concern also has been expressed that enforcement could depend on the race of the mall or shopping center patron. Furthermore, a minor accompanied by a 19-year-old could still create problems, since many persons of that age are just as likely to misbehave as are minors aged 16, 17, or 18. If a minor would have to be accompanied by an adult to enter a mall or shopping center during certain hours, then perhaps the adult should have to be at least 21 years of age.

Legislative Analyst: L. Arasim

FISCAL IMPACT

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

Fiscal Analyst: R. Ross

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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.