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SFA**BILL ANALYSIS**

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Senate Bill 380 (Substitute S-3 as passed by the Senate)
Sponsor: Senator Bill Bullard, Jr.
Committee: Judiciary

Date Completed: 4-10-02

RATIONALE

When a guest at a shopping center or entertainment venue acts in a manner that disturbs others or poses a threat of property damage or personal injury, security personnel might respond to the situation by confronting the person and, if necessary, removing him or her from the property. Security staff at these establishments apparently have the authority and capability to take those actions, but doing so may expose them to civil claims of wrongful ejection, unlawful arrest, assault, slander, or similar causes of action. Some people believe that the law should excuse shopping centers and entertainment forums from liability for these types of claims if a shopping center or entertainment forum has reasonable cause to believe that an individual is violating the terms for admission or creating a nuisance and the center or forum does not use excessive force or detain the individual for an unreasonable length of time.

CONTENT

The bill would amend the Revised Judicature Act to prohibit a plaintiff in a civil action from recovering damages against an entertainment forum or shopping center based on certain claims, if the entertainment forum had reasonable cause to believe that the individual violated the terms for admission, or if the entertainment forum or shopping center had reasonable cause to believe that the individual created a nuisance.

Under the bill, if a civil action for damages against an entertainment forum or a shopping center were based on false imprisonment, wrongful ejection, unlawful arrest, assault, battery, libel, slander, or a substantially

similar cause of action, were based on the conduct of an individual who violated the terms for admission to the entertainment forum, or were based on the conduct of an individual who created a nuisance at the entertainment forum or in the shopping center, the plaintiff could not recover damages of any kind if the entertainment forum had reasonable cause to believe, and did believe, that the individual violated the terms for admission to the entertainment forum; or if the entertainment forum or shopping center had reasonable cause to believe, and did believe, that the individual created a nuisance at the entertainment forum or in the shopping center.

These provisions would not apply, however, if the entertainment forum or shopping center used excessive force against the individual in light of the circumstances or detained him or her for an unreasonable length of time in light of the circumstances.

"Entertainment forum" would mean an arena; theater, including a theater with one or more auditoriums in a single structure for which there was a common parking area; circus; athletic grounds used for an athletic event or other form of public entertainment; or other place of public entertainment, with an aggregate seating capacity of at least 200. The term would include an owner, lessee, manager, or operator of an entertainment forum, an agent of an entertainment forum, or an independent contractor providing security for an entertainment forum.

"Shopping center" would mean commercial property for which a single lessor had executed two or more leases to people engaged in the sale of goods or services, and

for which there was a common parking area. The term would include an owner, lessee, manager, or operator of a shopping center, an agent of a shopping center, or an independent contractor providing security for a shopping center.

"Created a nuisance" would mean that an individual did one or more of the following at an entertainment forum or shopping center:

- Engaged in conduct that would constitute a misdemeanor or felony if committed by an adult.
- Physically harmed or threatened physical harm to an individual or property at the entertainment forum or shopping center.
- Engaged in conduct that significantly interfered with the right of others to view or hear the performance at the entertainment forum, or to participate in activities at the shopping center. (Engaging in lawful picketing or other labor activity and exercising constitutional free speech rights at an entertainment forum or shopping center would not create a nuisance under the bill.)
- Violated a published or announced rule of the entertainment forum or shopping center of which the individual knew or should have known.

"Violated the terms for admission" would mean that an individual admitted to an entertainment forum did one or more of the following:

- Engaged in conduct that would constitute a misdemeanor or felony if committed by an adult.
- Physically harmed or threatened physical harm to the entertainment forum or another individual admitted to it.
- Engaged in conduct that significantly interfered with the right of others to view or hear the performance at the entertainment forum. (Engaging in lawful picketing or other labor activity and exercising constitutional free speech rights at an entertainment forum would not violate the terms for admission to an entertainment forum under the bill.)
- Violated a published or announced rule of the entertainment forum of which the individual knew or should have known.
- If the individual's admission ticket designated a specific seat or seating location, refused to remain in his or her

designated seat or seating location after the entertainment forum requested that he or she remain in that seat or location.

Proposed MCL 600.2973 & 600.2974

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

Shopping center and entertainment forum proprietors desire to provide safe and comfortable settings for their customers to shop or engage in other activities at a shopping center or to enjoy a show, concert, or sporting event. To do so, the establishments must be able to deal with an unruly guest, even to the point of removing that person from the property by force. Too often, though, taking actions to remove people who cause a nuisance, damage property, or injure other people, or who threaten to do so, leaves a shopping center or entertainment forum open to civil suits based on such claims as wrongful ejection, slander, or unlawful arrest.

When a shopping center or entertainment forum has reasonable cause to believe that a person is creating a nuisance or violating the terms for admission to the facility, the center or forum should be free to address the situation without concern for legal retaliation on the part of the person ejected. As long as a person is not detained for an unreasonable length of time, or subjected to excessive force, a shopping center or entertainment forum should be held harmless for actions taken to maintain the safety and comfort of its guests. A statutory exemption from liability in these types of situations would allow shopping centers and entertainment forums to focus on operating their businesses and providing the kinds of services demanded of them by the public, rather than having to use financial and staff resources to respond to civil claims of wrongdoing simply for maintaining a safe environment for their customers.

Response: The bill's excessive force threshold for liability is too high. Excusing shopping centers and entertainment forums from liability for actions up to the use of excessive force would give their security personnel too much authority to use physical means to address problem situations and

would leave no one accountable for that action. For instance, if a security guard used unreasonable, but not excessive, force to subdue and physically remove a person and that person later died from injuries caused by that action, the security guard and his or her employer could not be held accountable. Use of unreasonable force, rather than excessive force, should be the ceiling on the bill's liability protections.

Opposing Argument

The bill is missing a key element: training standards for security staff. Minimum training standards for security guards are not required by law in Michigan. In recent years, there have been several reports of injuries and death caused by overzealous security guards at retail stores. Between June 2000 and April 2001, at least three deaths in southeastern Michigan were caused by actions of security guards and other staff in suspected shoplifting situations. In one of those incidents, a shopping mall security guard choked the father of a girl suspected of stealing a bracelet; in another, store personnel sat on a woman who left a drug store without paying for merchandise; and a third death occurred after a man was pinned to the ground while trying to steal meat from a grocery store. If security staff had been required to meet minimal training standards in those situations, the incidents might have had different outcomes.

While individual establishments may have sufficient training requirements for their security personnel, there are no statewide standards required to be met by security guards employed by businesses or by private contractors that provide security services. If liability protections were granted to businesses and their employees for actions taken to address problem situations and remove trouble-makers, as the bill proposes, the businesses should be required to ensure that their employees assigned to deal with those problems had at least a minimal amount of training. The bill should include security training standards, be tie-barred to legislation that would establish such standards, or require that businesses develop training standards and have them approved before liability protections would apply.

Response: According to testimony before the Senate Judiciary Committee, the International Council of Shopping Centers is involved in developing security training

standards, including local training sessions that are scheduled for April. If the bill's liability protections were enacted, industry-wide standards tailored to that policy could then be developed.

In addition, other bills recently reported from the Senate Judiciary Committee (Senate Bills 420 and 425) would address the development of training standards for security guards.

Opposing Argument

The bill could put Michigan citizens at risk of harm in various ways. By reducing the accountability of business owners, the bill could give free reign to inadequately trained private security forces to act with police powers. The bill also could exacerbate the problem of profiling based on race, age, or appearance. For instance, a young African-American man dressed in baggy pants, wearing a cap turned sideways, and sporting a tattoo and an earring might be more likely than a middle-aged white man wearing a business suit to be approached about his behavior at a concert.

Response: Shopping center and entertainment forum proprietors do not seek to have their security staff granted police powers. Their desire is not to arrest or detain those who interfere with other customers by creating a nuisance, but only to remove that element from the shopping and entertainment establishments without fear of legal reprisal in the form of a lawsuit. Profiling should not be a problem because, in order for the bill's liability protections to apply, the shopping center or entertainment forum would have to have reasonable cause to believe that the person was creating a nuisance or violating terms for admission.

Opposing Argument

Some provisions of the bill may be too vague or overly broad. For instance, the definition of "created a nuisance" would include engaging in conduct that significantly interfered with the right of others to view or hear the performance at an entertainment forum. This could apply to activity as innocuous as talking at a theater during a movie. That conduct very well might interfere with another's enjoyment of the movie, but it should not justify forcibly removing the talker from the theater.

In addition, the definition of "violated the terms for admission" to an entertainment

forum would include refusal to remain in a seat designated on an admission ticket. Conceivably, this could mean that a basketball fan who, in his or her exuberance, continually jumped up out of his or her seat could be subject to physical removal from the arena without any accountability on the part of the arena or its staff.

Response: The bill includes exceptions to the definitions of creating a nuisance and violating the terms of admission. Engaging in labor activity, such as lawful picketing, and exercising constitutional free speech rights at an entertainment forum or shopping center would not constitute engaging in conduct that significantly interfered with the rights of others under those definitions.

Opposing Argument

By referring to compliance with rules that were published or announced, the bill could discriminate against those with hearing or vision impairment or people who do not speak or read English. Further, using compliance with published or announced rules as a liability threshold when those rules may not be readily available to most customers could violate a person's due process rights for lack of notice.

Response: The bill refers to a published or announced rule of which the individual knew or should have known.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

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

Fiscal Analyst: Bill Bowerman

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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.