

**STATE OF MICHIGAN
85TH LEGISLATURE
REGULAR SESSION OF 1989**

Introduced by Senators Barcia, DiNello, Miller and O'Brien

ENROLLED SENATE BILL No. 119

AN ACT to amend sections 20, 33, and 33b of Act No. 8 of the Public Acts of the Extra Session of 1933, entitled as amended "An act to create a liquor control commission for the control of the alcoholic beverage traffic within the state of Michigan, and to prescribe its powers, duties and limitations; to provide for the control of the alcoholic liquor traffic within the state of Michigan and the establishment of state liquor stores; to provide for the care and treatment of alcoholics; to provide for the incorporation of farmer cooperative wineries and the granting of certain rights and privileges thereto; to provide for the licensing and taxation thereof, and the disposition of the moneys received under this act; to prescribe liability for retail licensees under certain circumstances; to require security for that liability; to provide procedures, defenses, and remedies regarding violations of this act; to provide for the enforcement and to prescribe penalties for violations of this act; to provide for the confiscation and disposition of property seized under the provisions of this act; to provide a referendum in certain cases; and to repeal certain acts and parts of acts," sections 20 and 33b as amended by Act No. 176 of the Public Acts of 1986, being sections 436.20, 436.33, and 436.33b of the Michigan Compiled Laws; and to add sections 33d and 33e.

The People of the State of Michigan enact:

Section 1. Sections 20, 33, and 33b of Act No. 8 of the Public Acts of the Extra Session of 1933, sections 20 and 33b as amended by Act No. 176 of the Public Acts of 1986, being sections 436.20, 436.33, and 436.33b of the Michigan Compiled Laws, are amended and sections 33d and 33e are added to read as follows:

Sec. 20. (1) The commission, and any commissioner or duly authorized agent of the commission designated by the chairperson of the commission, upon due notice and proper hearing, may suspend or revoke any license upon a violation of this act or any of the rules promulgated by the commission under this act. The commission, and any commissioner or duly authorized agent of the commission designated by the chairperson of the commission, may assess a penalty of not more than \$300.00 for each violation of this act or rules promulgated under this act, or not more than \$1,000.00 for each violation of section 22(3), in addition to or in lieu of revocation or suspension of the license, which penalty shall be paid to the commission and deposited with the state treasurer and shall be credited to the general fund of the state. The commission shall hold a hearing and order the suspension or revocation of a license if the licensee has been found liable, within a 24-month period, for 3 or more separate violations of section 22(3) which violations occurred on different occasions.

(2) Notwithstanding subsection (1), if a retailer or a retailer's clerk, agent, or employee violates this act by selling or furnishing alcoholic liquor to a person less than 21 years of age, or by allowing a person less than 21 years of age to consume alcoholic liquor or possess alcoholic liquor for personal consumption on the licensed premises, and if the enforcing agency involved in the prosecution of the violation is the state police or a local police agency, the commission shall not take any action under subsection (1) to suspend or revoke the licensee's license or assess a penalty against the licensee unless enforcement action is taken against the person less than 21 years of age who purchased or received the alcoholic liquor from the licensee.

(3) Subsection (2) does not apply to either of the following circumstances:

(a) The enforcing agent involved in the prosecution is a commission inspector rather than a police agency.

(b) The prosecution of the violation is the result of an undercover operation in which the person less than 21 years of age who purchased or received the alcoholic liquor acted under the direction of the state police or a local police agency as part of the enforcement action.

(4) The commission shall provide the procedure by which any licensee feeling aggrieved by any penalty imposed under subsection (1) and any suspension or revocation of a license ordered by the commission, a commissioner, or a duly authorized agent of the commission, may request a hearing for the purpose of presenting any facts or reasons to the commission why the penalty or the suspension or revocation should be modified or rescinded. Any such request shall be in writing and accompanied by a fee of \$25.00. The commission after reviewing the record made before a commissioner or a duly authorized agent of the commission may allow or refuse to allow the hearing in accordance with the commission's rules. Such right, however, shall not be interpreted by any court as curtailing, removing, or annulling the right of the commission to suspend or revoke licenses as provided for in this act. A licensee shall not have a right of appeal from the final determination of the commission, except by writ of certiorari to the circuit court. Notice of the order of suspension or revocation of a license or assessment of a penalty, or both, shall be given in the manner prescribed by the commission. The suspension or revocation of a license or assessment of a penalty, or both, by the commission or a duly authorized agent of the commission shall not prohibit the institution of a criminal prosecution for a violation of this act. The institution of a criminal prosecution for a violation of this act, or the acquittal or conviction of any person for a violation of this act, shall not prevent the suspension or revocation of a license or assessment of a penalty, or both, by the commission. In a hearing for the suspension or revocation of a license issued pursuant to this act, proof that the defendant licensee or an agent or employee of the licensee demanded and was shown, before furnishing any alcoholic liquor to a person less than 21 years of age, a motor vehicle operator or chauffeur license, a registration certificate issued by the federal selective service, or other bona fide documentary evidence of majority and identity of the person, may be offered as evidence in a defense to a proceeding for the suspension or revocation of a license issued under this act. A licensee who has reason to believe that a person less than 21 years of age has used fraudulent identification to purchase alcoholic liquor in violation of section 33b shall file a police report concerning the violation with a local law enforcement agency and shall also present the alleged fraudulent identification to the local law enforcement agency at the time of filing the report if the identification is in the possession of the licensee. The commission may promulgate rules pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws, regarding the utilization by licensees of equipment designed to detect altered or forged driver licenses, state identification cards, and other forms of identification.

(5) In addition to the hearing commissioners provided for in section 5, the chairperson of the commission may designate not more than 2 duly authorized agents to hear violation cases. A person appointed under this subsection shall be a member in good standing of the state bar of Michigan.

(6) A duly authorized agent who has been designated by the chairperson pursuant to subsection (5) shall have the same authority and responsibility as does a hearing commissioner under this act and the rules promulgated pursuant to this act, in the hearing of violation cases.

(7) A duly authorized agent who has been designated by the chairperson pursuant to subsection (5) shall be ineligible for appointment to the commission for a period of 1 year after the person ceases to serve as a duly authorized agent.

Sec. 33. (1) Alcoholic liquor shall not be sold or furnished to a person unless the person has attained 21 years of age. A person who knowingly sells or furnishes alcoholic liquor to a person who is less than 21 years of age, or who fails to make diligent inquiry as to whether the person is less than 21 years of age, is guilty of a misdemeanor, subject to subsection (2). A suitable sign which describes this section and the penalties for violating this section shall be posted in a conspicuous place in each room where alcoholic liquors are sold. The signs shall be approved and furnished by the state liquor control commission.

(2) If the person who violates subsection (1) is a retailer or a retailer's clerk, agent, or employee, the person shall not be prosecuted under subsection (1) unless enforcement action is taken against the person less than 21 years of age who purchased or received the alcoholic liquor from the licensee.

(3) Subsection (2) does not apply in either of the following circumstances:

(a) The enforcing agent involved in the prosecution is a commission inspector rather than a police agency.

(b) The prosecution of the violation is the result of an undercover operation in which the person less than 21 years of age who purchased or received the alcoholic liquor acted under the direction of the state police or a local police agency as part of the enforcement action.

(4) In an action for the violation of this section, proof that the defendant or the defendant's agent or employee demanded and was shown, before furnishing alcoholic liquor to a person less than 21 years of age, a motor vehicle operator's license or a registration certificate issued by the federal selective service, or other bona fide documentary evidence of the age and identity of that person, shall be a defense to an action under this section.

Sec. 33b. (1) A person less than 21 years of age shall not purchase or attempt to purchase alcoholic liquor, consume alcoholic liquor in a licensed premises, or possess or attempt to possess alcoholic liquor, except as provided in section 33a(1) of this act. A person less than 21 years of age who violates this subsection is responsible for a civil infraction, is liable for a civil fine of not less than \$50.00 and not more than \$500.00, and may be ordered to perform community service and/or participate in substance abuse prevention services as defined in section 6107 of the public health code, Act No. 368 of the Public Acts of 1978, being section 333.6107 of the Michigan Compiled Laws, and designated by the administrator of substance abuse services. In addition, the person is subject to the following penalties:

(i) For the first violation, the court shall order the secretary of state to suspend the person's operator or chauffeur license for 90 days.

(ii) For a second violation, the court shall order the secretary of state to suspend the person's operator or chauffeur license for not less than 90 days or more than 180 days.

(iii) For a third or subsequent violation, the court shall order the secretary of state to suspend the person's operator or chauffeur license for not less than 90 days or more than 1 year.

(2) A law enforcement agency, upon determining that a person less than 18 years of age allegedly consumed, possessed, attempted to possess, purchased, or attempted to purchase alcoholic liquor in violation of subsection (1), shall notify the parent or parents, custodian, or guardian of the person as to the nature of the violation. The notice required by this subsection shall be made not later than 48 hours after the law enforcement agency determines that the person who allegedly violated subsection (1) is less than 18 years of age and may be made in person, by telephone, or by first class mail.

(3) Fifty percent of the fines collected under subsection (1) shall be deposited with the state treasurer for deposit in the general fund to the credit of the department of public health for substance abuse prevention, treatment, and rehabilitation services.

(4) A person who furnishes fraudulent identification to a person less than 21 years of age, or a person less than 21 years of age who uses fraudulent identification to purchase alcoholic liquor, is guilty of a misdemeanor. The court shall order the secretary of state to suspend, for a period of 90 days, the operator or chauffeur license of a person who is convicted of using fraudulent identification in violation of this subsection and the operator or chauffeur license of that person shall be surrendered to the court. The court shall immediately forward the surrendered license and a certificate of conviction to the secretary of state. A suspension ordered under this subsection shall be in addition to any other suspension of the person's operator or chauffeur license.

(5) This section shall not be construed to prohibit a person less than 21 years of age from possessing alcoholic liquor during regular working hours and in the course of his or her employment if employed by a person licensed by this act, by the liquor control commission, or by an agent of the liquor control commission, if the alcoholic liquor is not possessed for his or her personal consumption.

(6) This section shall not be construed to limit the civil or criminal liability of the vendor or the vendor's clerk, servant, agent, or employee for a violation of this act.

(7) The consumption of alcoholic liquor by a person less than 21 years of age who is enrolled in a course offered by an accredited post secondary educational institution in an academic building of the institution under the supervision of a faculty member shall not be prohibited by this act if the purpose is solely educational and a necessary ingredient of the course.

Sec. 33d. An undercover operation conducted by a police agency or the commission to enforce section 20 or 33 as to the sale or furnishing of alcoholic liquor to a person less than 21 years of age shall not employ coercion or any promise of freedom from prosecution in order to obtain the participation of the person less than 21 years of age in the undercover operation.

Sec. 33e. (1) A person 21 years of age or older who purchases alcoholic liquor from a retailer shall not furnish that alcoholic liquor to a person less than 21 years of age.

(2) A person 21 years of age or older shall not be prosecuted under this section unless enforcement action is taken against the person less than 21 years of age who received the alcoholic liquor.

(3) A person who violates subsection (1) is guilty of a misdemeanor and shall be fined \$500.00. In addition, the person may be sentenced to imprisonment for not more than 90 days.

Section 2. This amendatory act shall take effect upon the expiration of 60 days after the date of its enactment.

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Secretary of the Senate.

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Clerk of the House of Representatives.

Approved.....

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Governor.