

SENATE BILL No. 182

March 1, 1989, Introduced by Senators WELBORN, GAST, SHINKLE, CROPSEY, POSTHUMUS, GEAKE, DILLINGHAM and SCHWARZ and referred to the Committee on Regulatory Affairs.

A bill to amend sections 5, 5b, and 20 of Act No. 8 of the Public Acts of the Extra Session of 1933, entitled as amended "The Michigan liquor control act," section 20 as amended by Act No. 176 of the Public Acts of 1986, being sections 436.5, 436.5b, and 436.20 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 5, 5b, and 20 of Act No. 8 of the
2 Public Acts of the Extra Session of 1933, section 20 as amended
3 by Act No. 176 of the Public Acts of 1986, being sections 436.5,
4 436.5b, and 436.20 of the Michigan Compiled Laws, are amended to
5 read as follows:

6 Sec. 5. (1) A commission to be known as the liquor control
7 commission is created.

1 (2) The commission shall consist of ~~5~~ 3 members, not more
2 than ~~3~~ 2 of whom shall be members of the same political party,
3 to be appointed by the governor with the advice and consent of
4 the senate. ~~Two of these members, 1 from each political party,~~
5 ~~shall be designated by the chairman as hearing commissioners to~~
6 ~~hear violation cases and to perform such other functions and~~
7 ~~duties as assigned to them by the chairman. The remaining 3 com-~~
8 ~~missioners shall be designated as administrative commissioners~~
9 ~~and~~ ON THE EFFECTIVE DATE OF THIS AMENDATORY ACT, ONLY THE 3
10 MEMBERS WITH THE LONGEST REMAINING TERMS SHALL REMAIN MEMBERS OF
11 THE COMMISSION.

12 (3) THE COMMISSIONERS shall ~~have the responsibility for~~
13 ~~administering~~ ADMINISTER the provisions of this act relating to
14 licensing, purchasing, enforcement, merchandising, and
15 distribution. ~~The administrative commissioners shall also act~~
16 ~~as an appeal board to the decisions rendered by the hearing~~
17 ~~commissioners. The responsibilities of the 5 member commission~~
18 ~~shall be the administration of the provisions of this act which~~
19 ~~have not been specifically delegated to either the hearing com-~~
20 ~~missioners or the administrative commissioners in this section.~~
21 Each member of the commission shall devote that member's entire
22 time to the performance of the duties of the office.

23 (4) The terms of the commissioners shall be 4 years each.
24 Each member of the commission shall qualify by taking and filing
25 the constitutional oath of office and shall hold office until the
26 appointment and qualification of a successor. The members of the

1 commission shall not be removed from office by the governor
2 except for malfeasance, misfeasance, or neglect in office.

3 (5) In the event of a vacancy or vacancies in the membership
4 of the commission, the governor shall appoint in like manner a
5 successor or successors to fill the unexpired term.

6 (6) A quorum for the transaction of business of the
7 ~~administrative~~ commissioners shall consist of 2
8 ~~administrative~~ commissioners. ~~A quorum for the transaction of~~
9 ~~business of the 5 member commission shall be 3 members.~~

10 (7) Each member of the commission shall receive an annual
11 salary as appropriated by the legislature, shall be entitled to
12 actual and necessary expenses while on the business of the com-
13 mission, and shall have a work station designated by the
14 ~~chairman~~ CHAIRPERSON.

15 (8) The commission shall annually designate 1 of its members
16 to act as ~~chairman~~ CHAIRPERSON of the commission.

17 Sec. 5b. (1) The powers of the commission, enumerated in
18 this act, which are not specifically and exclusively reserved to
19 the commission by ~~the~~ THIS act, shall be vested in, and exer-
20 cised and administered by a liquor control business manager, who
21 shall be selected by and responsible to the commission, and whose
22 position shall be in the state classified civil service.

23 (2) The powers of the commission enumerated in ~~, and pro-~~
24 ~~vided for by~~ this act ~~,~~ shall be exercised in conformity with
25 the provisions of the act pertaining to the duties of the liquor
26 control manager, ~~Provided, however, That~~ EXCEPT THAT the
27 commission shall exclusively exercise the power to make rules and

1 regulations under ~~the~~ THIS act to regulate the control of the
2 alcoholic beverage traffic within the state; ~~to hear and decide~~
3 ~~all cases of violation of the provisions of the act and regula-~~
4 ~~tions thereunder,~~ to employ a liquor control business manager as
5 provided for by the act; and to hear and decide all public
6 appeals from the administrative decisions of the liquor control
7 business manager.

8 (3) The liquor control business manager shall be and shall
9 serve as the business manager of the liquor control commission,
10 and as such it shall be his OR HER duty and responsibility to
11 manage the business affairs of the commission relative to pur-
12 chasing, merchandising, warehousing, rationing, distributing,
13 inspecting, investigating, licensing, and accounting, in accord-
14 ance with policies established by the liquor control commission
15 and in compliance with the provisions of this act and with the
16 rules and regulations adopted thereunder. In addition to the
17 foregoing, said business manager shall be exclusively responsible
18 for the assigning, training, and supervision of all commission
19 classified employees.

20 Sec. 20. (1) The commission, ~~and any commissioner or duly~~
21 ~~authorized agent of the commission designated by the chairperson~~
22 ~~of the commission,~~ upon due notice and proper hearing, may sus-
23 pend or revoke any license upon a violation of this act or any of
24 the rules promulgated by the commission under this act. The com-
25 mission ~~, and any commissioner or duly authorized agent of the~~
26 ~~commission designated by the chairperson of the commission,~~ may
27 assess a penalty of not more than \$300.00 for each violation of

1 this act or rules promulgated under this act, or not more than
2 \$1,000.00 for each violation of section 22(3), in addition to or
3 in lieu of revocation or suspension of the license, which penalty
4 shall be paid to the commission and deposited with the state
5 treasurer and shall be credited to the general fund of the
6 state. The commission shall hold a hearing and order the suspen-
7 sion or revocation of a license if the licensee has been found
8 liable, within a 24-month period, for 3 or more separate viola-
9 tions of section 22(3) which violations occurred on different
10 occasions.

11 (2) The commission shall provide the procedure by which any
12 licensee feeling aggrieved by any penalty imposed under subsec-
13 tion (1) and any suspension or revocation of a license ordered by
14 the commission ~~, a commissioner, or a duly authorized agent of~~
15 ~~the commission,~~ may request a hearing for the purpose of
16 presenting any facts or reasons to the commission why the penalty
17 or the suspension or revocation should be modified or rescinded.
18 Any such request shall be in writing and accompanied by a fee of
19 \$25.00. The commission, after reviewing the record, ~~made before~~
20 ~~a commissioner or a duly authorized agent of the commission~~ may
21 allow or refuse to allow the hearing in accordance with the
22 commission's rules. ~~Such~~ THAT right, however, shall not be
23 interpreted by any court as curtailing, removing, or annulling
24 the right of the commission to suspend or revoke licenses as pro-
25 vided for in this act. A licensee shall ~~not~~ have a right of
26 appeal from the final determination of the commission ~~, except~~
27 ~~by writ of certiorari~~ to the circuit court. Notice of the order

1 of suspension or revocation of a license or assessment of a
2 penalty, or both, shall be given in the manner prescribed by the
3 commission. The suspension or revocation of a license or assess-
4 ment of a penalty, or both, by the commission ~~or a duly autho-~~
5 ~~rized agent of the commission~~ shall not prohibit the institution
6 of a criminal prosecution for a violation of this act. The
7 institution of a criminal prosecution for a violation of this
8 act, or the acquittal or conviction of any person for a violation
9 of this act, shall not prevent the suspension or revocation of a
10 license or assessment of a penalty, or both, by the commission.
11 In a hearing for the suspension or revocation of a license issued
12 pursuant to this act, proof that the defendant licensee or an
13 agent or employee of the licensee demanded and was shown, before
14 furnishing any alcoholic liquor to a person less than 21 years of
15 age, a motor vehicle operator or chauffeur license, a registra-
16 tion certificate issued by the federal selective service, or
17 other bona fide documentary evidence of majority and identity of
18 the person, may be offered as evidence in a defense to a proceed-
19 ing for the suspension or revocation of a license issued under
20 this act. A licensee who has reason to believe that a person
21 less than 21 years of age has used fraudulent identification to
22 purchase alcoholic liquor in violation of section 33b shall file
23 a police report concerning the violation with a local law
24 enforcement agency and shall also present the alleged fraudulent
25 identification to the local law enforcement agency at the time of
26 filing the report if the identification is in the possession of
27 the licensee. The commission may promulgate rules pursuant to

1 the administrative procedures act of 1969, Act No. 306 of the
2 Public Acts of 1969, being sections 24.201 to 24.328 of the
3 Michigan Compiled Laws, regarding the utilization by licensees of
4 equipment designed to detect altered or forged driver licenses,
5 state identification cards, and other forms of identification.

6 (3) ~~In addition to the hearing commissioners provided for~~
7 ~~in section 5, the~~ THE chairperson of the commission ~~may~~ SHALL
8 designate not more than 2 ~~duly authorized agents~~ PERSONS to
9 hear ~~violation~~ AND PRESIDE OVER CONTESTED cases INVOLVING A
10 VIOLATION OF THIS ACT OR RULES PROMULGATED UNDER THIS ACT. A
11 person appointed under this subsection shall be a member in good
12 standing of the state bar of Michigan.

13 (4) A ~~duly authorized agent~~ PERSON who has been designated
14 by the chairperson pursuant to subsection (3) shall have the same
15 authority, POWERS, and responsibility as ~~does a hearing commis-~~
16 ~~sioner under this act and the rules promulgated pursuant to this~~
17 ~~act~~ A PRESIDING OFFICER AS DESCRIBED IN SECTION 80 OF THE ADMIN-
18 ISTRATIVE PROCEDURES ACT OF 1969, ACT NO. 306 OF THE PUBLIC ACTS
19 OF 1969, BEING SECTION 24.280 OF THE MICHIGAN COMPILED LAWS, in
20 the hearing of ~~violation~~ CONTESTED cases INVOLVING A VIOLATION
21 OF THIS ACT OR A RULE PROMULGATED UNDER THIS ACT.

22 (5) A ~~duly authorized agent~~ PERSON who has been designated
23 by the chairperson pursuant to subsection (3) shall be ineligible
24 for appointment to the commission for a period of 1 year after
25 the person ceases to serve ~~as a duly authorized agent~~ IN THAT
26 POSITION.