

# SENATE BILL No. 119

February 8, 1989, Introduced by Senators BARCIA, DI NELLO, MILLER and O'BRIEN and referred to the Committee on Regulatory Affairs.

A bill to amend sections 20, 33, and 33b of Act No. 8 of the Public Acts of the Extra Session of 1933, entitled as amended "The Michigan liquor control act," 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:

1       Section 1. Sections 20, 33, and 33b of Act No. 8 of the  
2 Public Acts of the Extra Session of 1933, sections 20 and 33b as  
3 amended by Act No. 176 of the Public Acts of 1986, being sections  
4 436.20, 436.33, and 436.33b of the Michigan Compiled Laws, are  
5 amended and sections 33d and 33e are added to read as follows:

6       Sec. 20. (1) The commission, and any commissioner or duly  
7 authorized agent of the commission designated by the chairperson  
8 of the commission, upon due notice and proper hearing, may

1 suspend or revoke any license upon a violation of this act or any  
2 of the rules promulgated by the commission under this act. The  
3 commission, and any commissioner or duly authorized agent of the  
4 commission designated by the chairperson of the commission, may  
5 assess a penalty of not more than \$300.00 for each violation of  
6 this act or rules promulgated under this act, or not more than  
7 \$1,000.00 for each violation of section 22(3), in addition to or  
8 in lieu of revocation or suspension of the license, which penalty  
9 shall be paid to the commission and deposited with the state  
10 treasurer and shall be credited to the general fund of the  
11 state. The commission shall hold a hearing and order the suspen-  
12 sion or revocation of a license if the licensee has been found  
13 liable, within a 24-month period, for 3 or more separate viola-  
14 tions of section 22(3) which violations occurred on different  
15 occasions.

16 (2) NOTWITHSTANDING SUBSECTION (1), IF A RETAILER OR A  
17 RETAILER'S CLERK, AGENT, OR EMPLOYEE VIOLATES THIS ACT BY SELLING  
18 OR FURNISHING ALCOHOLIC LIQUOR TO A PERSON LESS THAN 21 YEARS OF  
19 AGE, OR BY ALLOWING A PERSON LESS THAN 21 YEARS OF AGE TO CONSUME  
20 ALCOHOLIC LIQUOR OR POSSESS ALCOHOLIC LIQUOR FOR PERSONAL CON-  
21 SUMPTION ON THE LICENSED PREMISES, AND IF THE ENFORCING AGENCY  
22 INVOLVED IN THE PROSECUTION OF THE VIOLATION IS THE STATE POLICE  
23 OR A LOCAL POLICE AGENCY, THE COMMISSION SHALL NOT TAKE ANY  
24 ACTION UNDER SUBSECTION (1) TO SUSPEND OR REVOKE THE LICENSEE'S  
25 LICENSE OR ASSESS A PENALTY AGAINST THE LICENSEE UNLESS THE  
26 PERSON LESS THAN 21 YEARS OF AGE WHO PURCHASED OR RECEIVED THE

1 ALCOHOLIC LIQUOR FROM THE LICENSEE IS ISSUED AN APPEARANCE TICKET  
2 UNDER SECTION 33C FOR VIOLATING SECTION 33B(1).

3 (3) SUBSECTION (2) DOES NOT APPLY TO EITHER OF THE FOLLOWING  
4 CIRCUMSTANCES:

5 (A) THE ENFORCING AGENT INVOLVED IN THE PROSECUTION IS A  
6 COMMISSION INSPECTOR RATHER THAN A POLICE AGENCY.

7 (B) THE PROSECUTION OF THE VIOLATION IS THE RESULT OF AN  
8 UNDERCOVER OPERATION IN WHICH THE PERSON LESS THAN 21 YEARS OF  
9 AGE WHO PURCHASED OR RECEIVED THE ALCOHOLIC LIQUOR ACTED UNDER  
10 THE DIRECTION OF THE STATE POLICE OR A LOCAL POLICE AGENCY AS  
11 PART OF THE ENFORCEMENT ACTION.

12 (4) ~~-(2)-~~ The commission shall provide the procedure by  
13 which any licensee feeling aggrieved by any penalty imposed under  
14 subsection (1) and any suspension or revocation of a license  
15 ordered by the commission, a commissioner, or a duly authorized  
16 agent of the commission, may request a hearing for the purpose of  
17 presenting any facts or reasons to the commission why the penalty  
18 or the suspension or revocation should be modified or rescinded.  
19 Any such request shall be in writing and accompanied by a fee of  
20 \$25.00. The commission after reviewing the record made before a  
21 commissioner or a duly authorized agent of the commission may  
22 allow or refuse to allow the hearing in accordance with the  
23 commission's rules. Such right, however, shall not be interpre-  
24 ted by any court as curtailing, removing, or annulling the right  
25 of the commission to suspend or revoke licenses as provided for  
26 in this act. A licensee shall not have a right of appeal from  
27 the final determination of the commission, except by writ of

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

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

7 (5) ~~(3)~~ In addition to the hearing commissioners provided  
8 for in section 5, the chairperson of the commission may designate  
9 not more than 2 duly authorized agents to hear violation cases.  
10 A person appointed under this subsection shall be a member in  
11 good standing of the state bar of Michigan.

12 (6) ~~(4)~~ A duly authorized agent who has been designated by  
13 the chairperson pursuant to subsection ~~(3)~~ (5) shall have the  
14 same authority and responsibility as does a hearing commissioner  
15 under this act and the rules promulgated pursuant to this act, in  
16 the hearing of violation cases.

17 (7) ~~(5)~~ A duly authorized agent who has been designated by  
18 the chairperson pursuant to subsection ~~(3)~~ (5) shall be ineli-  
19 gible for appointment to the commission for a period of 1 year  
20 after the person ceases to serve as a duly authorized agent.

21 Sec. 33. (1) Alcoholic liquor shall not be sold or fur-  
22 nished to a person unless the person has attained 21 years of  
23 age. A person who knowingly sells or furnishes alcoholic liquor  
24 to a person who is less than 21 years of age, or who fails to  
25 make diligent inquiry as to whether the person is less than 21  
26 years of age, is guilty of a misdemeanor, SUBJECT TO SUBSECTION  
27 (2). A suitable sign which describes this section and the

1 penalties for violating this section shall be posted in a  
2 conspicuous place in each room where alcoholic liquors are sold.  
3 The signs shall be approved and furnished by the state liquor  
4 control commission.

5       (2) IF THE PERSON WHO VIOLATES SUBSECTION (1) IS A RETAILER  
6 OR A RETAILER'S CLERK, AGENT, OR EMPLOYEE, THE PERSON SHALL NOT  
7 BE PROSECUTED UNDER SUBSECTION (1) UNLESS THE PERSON LESS THAN  
8 21 YEARS OF AGE WHO PURCHASED OR RECEIVED THE ALCOHOLIC LIQUOR  
9 FROM THE LICENSEE IS ISSUED AN APPEARANCE TICKET UNDER SECTION  
10 33C FOR VIOLATING SECTION 33B(1). THIS SUBSECTION DOES NOT APPLY  
11 TO THE PROSECUTION OF A VIOLATION THAT RESULTS FROM AN UNDERCOVER  
12 OPERATION IN WHICH THE PERSON LESS THAN 21 YEARS OF AGE WHO PUR-  
13 CHASED OR RECEIVED THE ALCOHOLIC LIQUOR ACTED UNDER THE DIRECTION  
14 OF THE STATE POLICE OR A LOCAL POLICE AGENCY AS PART OF THE  
15 ENFORCEMENT ACTION.

16       (3) ~~-(2)-~~ In an action for the violation of this section,  
17 proof that the defendant or the defendant's agent or employee  
18 demanded and was shown, before furnishing alcoholic liquor to a  
19 person ~~under~~ LESS THAN 21 years of age, a motor vehicle  
20 operator's license or a registration certificate issued by the  
21 federal selective service, or other bona fide documentary evi-  
22 dence of the age and identity of that person, shall be a defense  
23 to an action under this section.

24       Sec. 33b. (1) A person less than 21 years of age shall not  
25 purchase OR ATTEMPT TO PURCHASE alcoholic liquor, consume alco-  
26 holic liquor in a licensed premises, or possess alcoholic liquor,  
27 except as provided in section 33a(1) of this act. A person less

1 than 21 years of age who violates this subsection is RESPONSIBLE  
2 FOR A CIVIL INFRACTION, AND IS liable for ~~the following~~ A civil  
3 ~~finer and shall not be subject to the penalties prescribed in~~  
4 ~~section 50~~ FINE OF NOT LESS THAN \$50.00 AND NOT MORE THAN  
5 \$500.00, AND MAY BE ORDERED TO PERFORM COMMUNITY SERVICE. IN  
6 ADDITION, THE PERSON IS SUBJECT TO THE FOLLOWING PENALTIES:

7 (i) For the first violation, ~~a fine of not more than~~  
8 ~~\$25.00~~ THE COURT MAY ORDER THE SECRETARY OF STATE TO SUSPEND THE  
9 PERSON'S OPERATOR OR CHAUFFEUR LICENSE FOR NOT MORE THAN 90  
10 DAYS.

11 (ii) For a second violation, ~~a fine of not more than~~  
12 ~~\$50.00, or participation in substance abuse prevention services~~  
13 ~~as defined in section 6107 of the public health code, Act No. 368~~  
14 ~~of the Public Acts of 1978, being section 333.6107 of the~~  
15 ~~Michigan Compiled Laws and designated by the administrator of~~  
16 ~~substance abuse services, or both~~ THE COURT MAY ORDER THE SECRE-  
17 TARY OF STATE TO SUSPEND THE PERSON'S OPERATOR OR CHAUFFEUR  
18 LICENSE FOR NOT MORE THAN 180 DAYS.

19 (iii) For a third or subsequent violation, ~~a fine of not~~  
20 ~~more than \$100.00, or participation in substance abuse prevention~~  
21 ~~services as defined in section 6107 of the public health code,~~  
22 ~~Act No. 368 of the Public Acts of 1978, and designated by the~~  
23 ~~administrator of substance abuse services, or both~~ THE COURT MAY  
24 ORDER THE SECRETARY OF STATE TO SUSPEND THE PERSON'S OPERATOR OR  
25 CHAUFFEUR LICENSE FOR NOT MORE THAN 1 YEAR.

26 (2) Fifty percent of the fines collected under subsection  
27 (1) shall be deposited with the state treasurer for deposit in

1 the general fund to the credit of the department of public health  
2 for substance abuse PREVENTION, treatment, and rehabilitation  
3 services.

4       (3) A person who furnishes fraudulent identification to a  
5 person less than 21 years of age, or a person less than 21 years  
6 of age who uses fraudulent identification to purchase alcoholic  
7 liquor, is guilty of a misdemeanor. The court shall order the  
8 secretary of state to suspend, for a period of 90 days, the oper-  
9 ator or chauffeur license of a person who is convicted of using  
10 fraudulent identification in violation of this subsection and the  
11 operator or chauffeur license of that person shall be surrendered  
12 to the court. The court shall immediately forward the surren-  
13 dered license and a certificate of conviction to the secretary of  
14 state. A suspension ordered under this subsection shall be in  
15 addition to any other suspension of the person's operator or  
16 chauffeur license.

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

24       (5) This section shall not be construed to limit the civil  
25 or criminal liability of the vendor or the vendor's clerk, ser-  
26 vant, agent, or employee for a violation of this act.

1       (6) The consumption of alcoholic liquor by a person ~~under~~  
2 LESS THAN 21 years of age who is enrolled in a course offered by  
3 an accredited post secondary educational institution in an aca-  
4 demic building of the institution under the supervision of a fac-  
5 ulty member shall not be prohibited by this act if the purpose is  
6 solely educational and a necessary ingredient of the course.

7       SEC. 33D. AN UNDERCOVER OPERATION CONDUCTED BY A POLICE  
8 AGENCY OR THE COMMISSION TO ENFORCE SECTION 20 OR 33 AS TO THE  
9 SALE OR FURNISHING OF ALCOHOLIC LIQUOR TO A PERSON LESS THAN 21  
10 YEARS OF AGE SHALL NOT EMPLOY COERCION OR ANY PROMISE OF FREEDOM  
11 FROM PROSECUTION IN ORDER TO OBTAIN THE PARTICIPATION OF THE  
12 PERSON LESS THAN 21 YEARS OF AGE IN THE UNDERCOVER OPERATION.

13       SEC. 33E. (1) A PERSON 21 YEARS OF AGE OR OLDER WHO PUR-  
14 CHASES ALCOHOLIC LIQUOR FROM A CLASS C LICENSEE SHALL NOT FURNISH  
15 THAT ALCOHOLIC LIQUOR TO A PERSON LESS THAN 21 YEARS OF AGE.

16       (2) A PERSON 21 YEARS OF AGE OR OLDER SHALL NOT BE PROSE-  
17 CUTED UNDER THIS SECTION UNLESS THE PERSON LESS THAN 21 YEARS OF  
18 AGE WHO RECEIVED THE ALCOHOLIC LIQUOR IS ISSUED AN APPEARANCE  
19 TICKET UNDER SECTION 33C FOR VIOLATING SECTION 33B(1).

20       (3) A PERSON WHO VIOLATES SUBSECTION (1) IS GUILTY OF A MIS-  
21 DEMEANOR AND SHALL BE FINED \$500.00. IN ADDITION, THE PERSON MAY  
22 BE SENTENCED TO IMPRISONMENT FOR NOT MORE THAN 90 DAYS.

23       Section 2. This amendatory act shall take effect October 1,  
24 1989.