

HOUSE BILL No. 5133

October 2, 2001, Introduced by Reps. Hardman, Reeves, Garza, Murphy, Williams, Dennis, Jacobs, Daniels, Bovin, Bogardus, Hale and Lemmons and referred to the Committee on Regulatory Reform.

A bill to amend 1998 PA 58, entitled
"Michigan liquor control code of 1998,"
by amending sections 701 and 903 (MCL 436.1701 and 436.1903),
section 903 as amended by 2000 PA 431.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 701. (1) Alcoholic liquor shall not be sold or fur-
2 nished to a minor. Except as otherwise provided in
3 subsection (2) and subject to subsection (4), a person who know-
4 ingly sells or furnishes alcoholic liquor to a minor, or who
5 fails to make diligent inquiry as to whether the person is a
6 minor, is guilty of a misdemeanor. A retail licensee or a retail
7 licensee's clerk, agent, or employee who violates this subsection
8 ~~shall be punished in the manner provided for licensees in~~
9 ~~section 909. Notwithstanding section 909 and except~~ IS GUILTY
10 OF A MISDEMEANOR PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 6

1 MONTHS, A FINE OF NOT MORE THAN \$500.00 ON A FIRST OFFENSE AND
2 NOT MORE THAN \$5,000.00 ON A SECOND OR SUBSEQUENT OFFENSE, OR
3 BOTH IMPRISONMENT AND A FINE. EXCEPT as otherwise provided in
4 subsection (2), a person who is not a retail licensee or a retail
5 licensee's clerk, agent, or employee and who violates this sub-
6 section ~~shall be fined~~ IS GUILTY OF A MISDEMEANOR PUNISHABLE BY
7 A FINE OF \$1,000.00 and ~~may be sentenced to~~ imprisonment for
8 ~~up to~~ NOT MORE THAN 60 days for a first offense, ~~shall be~~
9 ~~fined~~ A FINE OF \$2,500.00 and ~~shall be sentenced to~~ imprison-
10 ment for ~~up to~~ NOT MORE THAN 90 days for a second or subsequent
11 offense, and may be ordered to perform community service. A
12 suitable sign describing the content of this section and the pen-
13 alties for its violation shall be posted in a conspicuous place
14 in each room where alcoholic liquor is sold. The signs shall be
15 approved and furnished by the commission.

16 (2) A person who is not a retail licensee or the retail
17 licensee's clerk, agent, or employee and who violates
18 subsection (1) is guilty of a felony, punishable by imprisonment
19 for not more than 10 years, or a fine of not more than \$5,000.00,
20 or both, if the subsequent consumption of the alcoholic liquor by
21 the minor is a direct and substantial cause of that person's
22 death or an accidental injury that causes that person's death.

23 (3) If a violation occurs in an establishment that is
24 licensed by the commission for consumption of alcoholic liquor on
25 the licensed premises, a person who is a licensee or the clerk,
26 agent, or employee of a licensee shall not be charged with a
27 violation of subsection (1) or section 801(2) unless the licensee

1 or the clerk, agent, or employee of the licensee knew or should
2 have reasonably known with the exercise of due diligence that a
3 person less than 21 years of age possessed or consumed alcoholic
4 liquor on the licensed premises and the licensee or clerk, agent,
5 or employee of the licensee failed to take immediate corrective
6 action.

7 (4) If the enforcing agency involved in the violation is the
8 state police or a local police agency, a licensee shall not be
9 charged with a violation of subsection (1) or section 801(2)
10 unless enforcement action under section 703 is taken against the
11 minor who purchased or attempted to purchase, consumed or
12 attempted to consume, or possessed or attempted to possess alco-
13 holic liquor and, if applicable, enforcement action is taken
14 under this section against the person 21 years of age or older
15 who sold or furnished the alcoholic liquor to the minor. If the
16 enforcing agency is the commission, then the commission shall
17 recommend to a local law enforcement agency that enforcement
18 action be taken against a violator of this section or section 703
19 who is not a licensee. However, this subsection does not apply
20 under any of the following circumstances:

21 (a) The person against whom enforcement action is taken
22 under section 703 or the person 21 years of age or older who sold
23 or furnished alcoholic liquor to the minor is not alive or is not
24 present in this state at the time the licensee is charged.

25 (b) The violation of subsection (1) is the result of an
26 undercover operation in which the minor purchased or received
27 alcoholic liquor under the direction of the person's employer and

1 with the prior approval of the local prosecutor's office as part
2 of an employer-sponsored internal enforcement action.

3 (c) The violation of subsection (1) is the result of an
4 undercover operation in which the minor purchased or received
5 alcoholic liquor under the direction of the state police, the
6 commission, or a local police agency as part of an enforcement
7 action. However, any initial or contemporaneous purchase or
8 receipt of alcoholic liquor by the minor shall have been under
9 the direction of the state police, the commission, or the local
10 police agency and shall have been part of the undercover
11 operation.

12 (5) If a minor participates in an undercover operation in
13 which the minor is to purchase or receive alcoholic liquor under
14 the supervision of a law enforcement agency, his or her parents
15 or legal guardian shall consent to the participation if that
16 person is less than 18 years of age.

17 (6) In an action for the violation of this section, proof
18 that the defendant or the defendant's agent or employee demanded
19 and was shown, before furnishing alcoholic liquor to a minor, a
20 motor vehicle operator's or chauffeur's license or a registration
21 certificate issued by the federal selective service, or other
22 bona fide documentary evidence of the age and identity of that
23 person, shall be a defense to an action brought under this
24 section.

25 (7) The commission shall provide, on an annual basis, a
26 written report to the department of state police as to the number
27 of actions heard by the commission involving violations of this

1 section and section 801(2). The report shall include the
2 disposition of each action and contain figures representing the
3 following categories:

4 (a) Decoy operations.

5 (b) Off-premises violations.

6 (c) On-premises violations.

7 (d) Repeat offenses within the 3 years preceding the date of
8 that report.

9 (8) As used in this section:

10 (a) "Corrective action" means action taken by a licensee or
11 a clerk, agent, or employee of a licensee designed to prevent a
12 minor from further possessing or consuming alcoholic liquor on
13 the licensed premises. Corrective action includes, but is not
14 limited to, contacting a law enforcement agency and ejecting the
15 minor and any other person suspected of aiding and abetting the
16 minor.

17 (b) "Diligent inquiry" means a diligent good faith effort to
18 determine the age of a person, which includes at least an exami-
19 nation of an official Michigan operator's or chauffeur's license,
20 an official Michigan personal identification card, or any other
21 bona fide picture identification which establishes the identity
22 and age of the person.

23 Sec. 903. (1) The commission or any commissioner or duly
24 authorized agent of the commission designated by the chairperson
25 of the commission, upon due notice and proper hearing, may sus-
26 pend or revoke any license upon a violation of this act or any of
27 the rules promulgated by the commission under this act. The

1 commission or any commissioner or duly authorized agent of the
2 commission designated by the chairperson of the commission, may
3 assess a penalty of not more than \$300.00 for each violation of
4 this act or rules promulgated under this act, or not more than
5 \$1,000.00 for each violation of section 801(2), in addition to or
6 in lieu of revocation or suspension of the license, which penalty
7 shall be paid to the commission and deposited with the state
8 treasurer and shall be credited to the general fund of the
9 state. The commission shall hold a hearing and order the suspen-
10 sion or revocation of a license if the licensee has been found
11 liable for ~~3~~ 2 or more separate violations of section 801(2)
12 which violations occurred on different occasions within a
13 24-month period unless such violations for the sale, furnishing,
14 or giving alcoholic liquor to a minor were discovered by the
15 licensee and disclosed to an appropriate law enforcement agency
16 immediately upon discovery.

17 (2) The commission shall provide a procedure by which a
18 licensee who is aggrieved by any penalty imposed under subsection
19 (1) and any suspension or revocation of a license ordered by the
20 commission, a commissioner, or a duly authorized agent of the
21 commission may request a hearing for the purpose of presenting
22 any facts or reasons to the commission as to why the penalty,
23 suspension, or revocation should be modified or rescinded. Any
24 such request shall be in writing and accompanied by a fee of
25 \$25.00. The commission, after reviewing the record made before a
26 commissioner or a duly authorized agent of the commission, may
27 allow or refuse to allow the hearing in accordance with the

1 commission's rules. The right to a hearing provided in this
2 subsection, however, shall not be interpreted by any court as
3 curtailing, removing, or annulling the right of the commission to
4 suspend or revoke licenses as provided for in this act. A
5 licensee does not have a right of appeal from the final determi-
6 nation of the commission, except by leave of the circuit court.
7 Notice of the order of suspension or revocation of a license or
8 of the assessment of a penalty, or both, shall be given in the
9 manner prescribed by the commission. The suspension or revoca-
10 tion of a license or the assessment of a penalty, or both, by the
11 commission or a duly authorized agent of the commission does not
12 prohibit the institution of a criminal prosecution for a viola-
13 tion of this act. The institution of a criminal prosecution for
14 a violation of this act or the acquittal or conviction of a
15 person for a violation of this act does not prevent the suspen-
16 sion or revocation of a license or the assessment of a penalty,
17 or both, by the commission. In a hearing for the suspension or
18 revocation of a license issued under this act, proof that the
19 defendant licensee or an agent or employee of the licensee
20 demanded and was shown, before furnishing any alcoholic liquor to
21 a minor, a motor vehicle operator or chauffeur license or a reg-
22 istration certificate issued by the federal selective service, or
23 other bona fide documentary evidence of majority and identity of
24 the person, may be offered as evidence in a defense to a proceed-
25 ing for the suspension or revocation of a license issued under
26 this act. A licensee who has reason to believe that a minor has
27 used fraudulent identification to purchase alcoholic liquor in

1 violation of section 703 shall file a police report concerning
2 the violation with a local law enforcement agency and shall also
3 present the alleged fraudulent identification to the local law
4 enforcement agency at the time of filing the report if the iden-
5 tification is in the possession of the licensee. The commission
6 may promulgate rules pursuant to the administrative procedures
7 act of 1969, 1969 PA 306, MCL 24.201 to 24.328, regarding the
8 utilization by licensees of equipment designed to detect altered
9 or forged driver licenses, state identification cards, and other
10 forms of identification.

11 (3) In addition to the hearing commissioners provided for in
12 section 209, the chairperson of the commission may designate not
13 more than 2 duly authorized agents to hear violation cases. A
14 person appointed under this subsection shall be a member in good
15 standing of the state bar of Michigan.

16 (4) A duly authorized agent who has been designated by the
17 chairperson pursuant to subsection (3) shall have, in the hearing
18 of violation cases, the same authority and responsibility as does
19 a hearing commissioner under this act and the rules promulgated
20 under this act.

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