

**SUBSTITUTE FOR
HOUSE BILL NO. 5198**

A bill to amend 1998 PA 58, entitled
"Michigan liquor control code of 1998,"
by amending section 701 (MCL 436.1701), as amended by 2006 PA 682.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 701. (1) Alcoholic liquor shall not be sold or furnished
2 to a minor. Except as otherwise provided in subsection (2) and
3 subject to subsections (4), (5), and (6), a person who knowingly
4 sells or furnishes alcoholic liquor to a minor, or who fails to
5 make diligent inquiry as to whether the person is a minor, is
6 guilty of a misdemeanor. A retail licensee or a retail licensee's
7 clerk, agent, or employee who violates this subsection shall be
8 punished in the manner provided for licensees in section 909 except
9 that if the violation is the result of an undercover operation in
10 which the minor received alcoholic liquor under the direction of

1 the state police, the commission, or a local police agency as part
2 of an enforcement action, the retail licensee's clerk, agent, or
3 employee is responsible for a state civil infraction and may be
4 ordered to pay a civil fine of not more than \$100.00. Except as
5 otherwise provided in subsection (2), a person who is not a retail
6 licensee or a retail licensee's clerk, agent, or employee and who
7 violates this subsection is guilty of a misdemeanor punishable by a
8 fine of not more than \$1,000.00 and imprisonment for not more than
9 60 days for a first offense, a fine of not more than \$2,500.00 and
10 imprisonment for not more than 90 days for a second or subsequent
11 offense, and may be ordered to perform community service. **THE**
12 **SENTENCING COURT MAY ORDER THE SECRETARY OF STATE TO SUSPEND THE**
13 **OPERATOR'S OR CHAUFFEUR'S LICENSE OF AN INDIVIDUAL WHO IS NOT A**
14 **RETAIL LICENSEE OR RETAIL LICENSEE'S CLERK, AGENT, OR EMPLOYEE AND**
15 **WHO IS CONVICTED OF VIOLATING THIS SUBSECTION AS PROVIDED IN**
16 **SECTION 319 OF THE MICHIGAN VEHICLE CODE, 1949 PA 300, MCL 257.319.**
17 A suitable sign describing the content of this section and the
18 penalties for its violation shall be posted in a conspicuous place
19 in each room where alcoholic liquor is sold. The signs shall be
20 approved and furnished by the commission.

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

1 (3) If a violation occurs in an establishment that is licensed
2 by the commission for consumption of alcoholic liquor on the
3 licensed premises, a person who is a licensee or the clerk, agent,
4 or employee of a licensee shall not be charged with a violation of
5 subsection (1) or section 801(2) unless the licensee or the clerk,
6 agent, or employee of the licensee knew or should have reasonably
7 known with the exercise of due diligence that a person less than 21
8 years of age possessed or consumed alcoholic liquor on the licensed
9 premises and the licensee or clerk, agent, or employee of the
10 licensee failed to take immediate corrective action.

11 (4) If the enforcing agency involved in the violation is the
12 state police or a local police agency, a licensee shall not be
13 charged with a violation of subsection (1) or section 801(2) unless
14 all of the following occur, if applicable:

15 (a) Enforcement action is taken against the minor who
16 purchased or attempted to purchase, consumed or attempted to
17 consume, or possessed or attempted to possess alcoholic liquor.

18 (b) Enforcement action is taken under this section against the
19 person 21 years of age or older who is not the retail licensee or
20 the retail licensee's clerk, agent, or employee who sold or
21 furnished the alcoholic liquor to the minor.

22 (c) Enforcement action under this section is taken against the
23 clerk, agent, or employee who directly sold or furnished alcoholic
24 liquor to the minor.

25 (5) If the enforcing agency is the commission and an
26 appearance ticket or civil infraction citation has not been issued,
27 then the commission shall recommend to a local law enforcement

1 agency that enforcement action be taken against a violator of this
2 section or section 703 who is not a licensee. However, subsection
3 (4) does not apply if the minor against whom enforcement action is
4 taken under section 703, the clerk, agent, or employee of the
5 licensee who directly sold or furnished alcoholic liquor to the
6 minor, or the person 21 years of age or older who sold or furnished
7 alcoholic liquor to the minor is not alive or is not present in
8 this state at the time the licensee is charged. Subsection (4)(a)
9 does not apply under either of the following circumstances:

10 (a) The violation of subsection (1) is the result of an
11 undercover operation in which the minor purchased or received
12 alcoholic liquor under the direction of the person's employer and
13 with the prior approval of the local prosecutor's office as part of
14 an employer-sponsored internal enforcement action.

15 (b) The violation of subsection (1) is the result of an
16 undercover operation in which the minor purchased or received
17 alcoholic liquor under the direction of the state police, the
18 commission, or a local police agency as part of an enforcement
19 action.

20 (6) Any initial or contemporaneous purchase or receipt of
21 alcoholic liquor by the minor under subsection (5)(a) or (b) must
22 have been under the direction of the state police, the commission,
23 or the local police agency and must have been part of the
24 undercover operation.

25 (7) If a minor participates in an undercover operation in
26 which the minor is to purchase or receive alcoholic liquor under
27 the supervision of a law enforcement agency, his or her parents or

1 legal guardian shall consent to the participation if that person is
2 less than 18 years of age.

3 (8) In an action for the violation of this section, proof that
4 the defendant or the defendant's agent or employee demanded and was
5 shown, before furnishing alcoholic liquor to a minor, a motor
6 vehicle operator's or chauffeur's license, a military
7 identification card, or other bona fide documentary evidence of the
8 age and identity of that person, shall be a defense to an action
9 brought under this section.

10 (9) The commission shall provide, on an annual basis, a
11 written report to the department of state police as to the number
12 of actions heard by the commission involving violations of this
13 section and section 801(2). The report shall include the
14 disposition of each action and contain figures representing the
15 following categories:

16 (a) Decoy operations.

17 (b) Off-premises violations.

18 (c) On-premises violations.

19 (d) Repeat offenses within the 3 years preceding the date of
20 that report.

21 (10) As used in this section:

22 (a) "Corrective action" means action taken by a licensee or a
23 clerk, agent, or employee of a licensee designed to prevent a minor
24 from further possessing or consuming alcoholic liquor on the
25 licensed premises. Corrective action includes, but is not limited
26 to, contacting a law enforcement agency and ejecting the minor and
27 any other person suspected of aiding and abetting the minor.

1 (b) "Diligent inquiry" means a diligent good faith effort to
2 determine the age of a person, which includes at least an
3 examination of an official Michigan operator's or chauffeur's
4 license, an official Michigan personal identification card, a
5 military identification card, or any other bona fide picture
6 identification which establishes the identity and age of the
7 person.

8 Enacting section 1. This amendatory act does not take effect
9 unless House Bill No. 5199 of the 95th Legislature is enacted into
10 law.