

HOUSE BILL No. 4317

February 15, 1991, Introduced by Reps. Dolan, Kosteva, Bouchard, Fitzgerald, Strand, London, Dalman, Walberg, Martin and Middleton and referred to the Committee on Liquor Control.

A bill to amend sections 17 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 17 as amended by Act No. 118 of the Public Acts of 1989 and section 20 as amended by Act No. 176 of the Public Acts of 1986, being sections 436.17 and 436.20 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 17 and 20 of Act No. 8 of the Public
2 Acts of the Extra Session of 1933, section 17 as amended by Act
3 No. 118 of the Public Acts of 1989 and section 20 as amended by
4 Act No. 176 of the Public Acts of 1986, being sections 436.17 and
5 436.20 of the Michigan Compiled Laws, are amended to read as
6 follows:

1 Sec. 17. (1) The commission may issue licenses, as provided
2 in this act, upon the payment of the fees provided in section 19
3 and the filing of the bonds required in section 22, or liability
4 insurance as provided in section 22a.

5 (2) The commission shall issue licenses to manufacturers
6 only when 25% or more of the capital stock is owned by residents
7 of this state, except that these limitations shall not apply to
8 manufacturers of wine, mixed spirit drink, beer, or malt beverage
9 or to distillers or rectifiers.

10 (3) A full-year license issued by the commission shall
11 expire on April 30 following the date of issuance or the date
12 fixed by the commission. A license issued under this act shall
13 be construed to be a contract between the commission and the
14 licensee and shall be signed by both parties. When a licensee
15 dies, the commission may approve the operation of the establishment
16 by a personal representative or independent personal representative
17 duly appointed by the proper court, pending the settlement
18 of the estate of the deceased licensee. The commission may
19 approve a receiver or trustee appointed by a proper court to
20 operate the licensed establishment of a licensee of the
21 commission. The commission may grant a part-year license for a
22 proportionate part of the license fee specified in section 19.
23 In a resort area the commission shall grant a license for as
24 short a period as 3 months. A license may be transferred with
25 the consent of the commission. A class C or specially designated
26 distributor license obtained other than by transfer shall not be
27 transferred within 3 years after its issuance except if the

1 licensee clearly and convincingly shows that unusual hardship
2 will result if the transfer is not consented to by the
3 commission. Except as provided in section 17b, an application
4 for a license to sell alcoholic liquor for consumption on the
5 premises, except in a city having a population of 1,000,000 or
6 more, shall be approved by the local legislative body in which
7 the applicant's place of business is located before the license
8 is granted by the commission, except that in the case of an
9 application for renewal of an existing license, if an objection
10 to a renewal has not been filed with the commission by the local
11 legislative body not less than 30 days before the date of expira-
12 tion of the license, the approval of the local legislative body
13 shall not be required. The commission shall provide the local
14 legislative body and the local chief of police with the name,
15 home and business addresses, and home and business phone numbers
16 to accomplish the local legislative reviews of new and trans-
17 ferred license applications called for in this subsection. Upon
18 request of the local legislative body after due notice and proper
19 hearing by the local legislative body and the commission, the
20 commission shall revoke the license of a licensee granted a
21 license to sell alcoholic liquor for consumption on the premises,
22 or the commission shall revoke any permit issued by the commis-
23 sion which is held in conjunction with a license to sell alco-
24 holic liquor for consumption on the premises.

25 (4) A local legislative body, by resolution, may request
26 that the commission revoke the license of a licensee granted a
27 license to sell alcoholic liquor for consumption off the premises

1 whose place of business is located within the local legislative
2 body's jurisdiction and who has been determined pursuant to com-
3 mission violation hearings to have sold or furnished alcoholic
4 liquor, on at least 3 separate occasions in a ~~single calendar~~
5 ~~year~~ 12-MONTH PERIOD, to a person who is less than 21 years of
6 age, ~~provided said~~ IF THE violations did not involve the use of
7 falsified or fraudulent identification by the person who is less
8 than 21 years of age. If the commission verifies that the
9 licensee who is the subject of the resolution has been found to
10 have committed the violations as prescribed in this subsection,
11 the commission may suspend or revoke the licensee's license, and
12 any permit held in conjunction with the license. FOR PURPOSES OF
13 THIS SUBSECTION, THE DATE ON WHICH THE DEFENDANT COMMITTED A VIO-
14 LATION IS CONTROLLING IN DETERMINING WHETHER 3 VIOLATIONS HAVE
15 OCCURRED IN A 12-MONTH PERIOD.

16 (5) Except as otherwise provided in this act, a license
17 other than a special license which has been approved by the gov-
18 erning authority of ~~such~~ state owned land shall not be issued
19 by the commission to sell alcoholic liquor, either on or off the
20 premises, if the property or establishment to be covered by the
21 license is situated in or on state owned land. However, this
22 prohibition shall not apply to the following land:

23 (a) The Michigan state fairgrounds.

24 (b) The Upper Peninsula state fairgrounds.

25 (c) Armories, air bases, and naval installations owned or
26 leased by the state or provided by the federal government by

1 either lease, license, or use permit and used by outside parties
2 of a nonmilitary or state governmental nature.

3 (d) Land which was under lease to a person licensed in the
4 calendar year 1954 and on which a licensed establishment is pres-
5 ently located.

6 (e) Land which was owned or leased by the federal govern-
7 ment, used as a military installation, and transferred to this
8 state before January 1, 1980 pursuant to Act No. 151 of the
9 Public Acts of 1978, being sections 3.551 to 3.561 of the
10 Michigan Compiled Laws. Two additional licenses may be issued
11 pursuant to this subdivision for establishments located on this
12 state land without regard to or effect on the quota provisions of
13 section 19c in the local governmental unit in which the license
14 will be issued. A person issued a license pursuant to this sub-
15 division may renew the license and transfer ownership of the
16 license, without regard to or effect on the quota provisions of
17 section 19c, if title to the property covered by the license is
18 transferred from the state to another person or to another gov-
19 ernmental unit. The commission shall not transfer a license
20 issued under this subdivision to another location. Before the
21 issuance of a license, and annually thereafter before the issu-
22 ance of a license for a new licensing period, the applicant for a
23 license shall submit to the commission a certificate from the
24 department or agency charged with control of the land setting
25 forth that the issuance of a license is not incompatible with the
26 objects and purposes entrusted to that department or agency under
27 the law establishing control of the land in the department or

1 agency. This subsection shall not prohibit the issuance of a
2 license pursuant to section 17h.

3 (f) Property owned by the Michigan state waterways commis-
4 sion and leased to persons under the harbor development act, Act
5 No. 79 of the Public Acts of 1988, being sections 281.1251 to
6 281.1268 of the Michigan Compiled Laws. A license may be issued
7 under this subdivision to a lessee without regard to the quota
8 provisions of section 19c, but the license shall not be issued
9 without the written approval of the Michigan state waterways com-
10 mission or its designee. A license issued under this subdivision
11 shall not be transferable as to ownership or location, and, if
12 the licensee goes out of business, the license shall be surren-
13 dered to the ~~liquor control~~ commission.

14 (6) This act shall not prohibit a hotel, which is or was the
15 holder of a license authorizing the retail sale of alcoholic
16 liquor for consumption on the premises, from applying for and
17 receiving, under this act, any other and different type of
18 license authorizing the retail sale of alcoholic liquor for con-
19 sumption on the premises, ~~nor shall~~ AND the application for the
20 license SHALL NOT be considered a new application for a license,
21 so long as the total number of public licenses for consumption on
22 the premises shall not exceed the authorized total established in
23 this act and the sale of alcoholic liquor is approved by the
24 electors. The commission may divide the state into 3 zones and
25 establish for each zone an anniversary date for renewal of
26 full-year retail licenses in the licensing year. The commission
27 shall promulgate rules pursuant to the administrative procedures

1 act of 1969, Act No. 306 of the Public Acts of 1969, as amended,
2 being sections 24.201 to 24.328 of the Michigan Compiled Laws,
3 for the effective administration of the renewal of licenses.

4 (7) The commission, with the written approval of the depart-
5 ment of natural resources in the case of the Michigan state fair-
6 grounds and the department of agriculture, in the case of the
7 Upper Peninsula state fairgrounds, may issue without regard to
8 the quota provision of section 19c a tavern license to a person
9 as concessionaire leasing or renting a portion of either the
10 Upper Peninsula state fairgrounds or the state fairgrounds, or
11 both, to service the licensed area in use for recreational or
12 exhibition purposes, other than at the time of the annual state
13 fair, under section 6 of the Michigan exposition and fairgrounds
14 act, Act No. 361 of the Public Acts of 1978, being
15 section 285.166 of the Michigan Compiled Laws, and the annual
16 Upper Peninsula state fair, under section 2 of Act No. 89 of the
17 Public Acts of 1927, as amended, being section 285.142 of the
18 Michigan Compiled Laws. A license issued under this subsection
19 is not transferable.

20 (8) Notwithstanding section 3, a collector, who is 21 years
21 of age or older, of ceramic commemorative bottles containing
22 alcoholic liquor and which bear an unbroken federal tax stamp or
23 seal may sell or trade the bottles to other such collectors of
24 the bottles without obtaining a license pursuant to this act.
25 All sales conducted pursuant to this subsection shall be for the
26 purpose of exchanging ceramic commemorative bottles between
27 private collectors of the bottles and shall not be for the

1 purpose of selling alcoholic liquor for personal consumption. A
2 sale or exchange conducted pursuant to this subsection shall not
3 occur in any of the following ways:

4 (a) In connection with the business of a holder of an alco-
5 holic liquor license.

6 (b) In connection with any other business.

7 Sec. 20. (1) The commission, and any commissioner or duly
8 authorized agent of the commission designated by the chairperson
9 of the commission, upon due notice and proper hearing, may sus-
10 pend or revoke any license upon a violation of this act or any of
11 the rules promulgated by the commission under this act. The com-
12 mission, and any commissioner or duly authorized agent of the
13 commission designated by the chairperson of the commission, may
14 assess a penalty of not more than \$300.00 for each violation of
15 this act or rules promulgated under this act, or not more than
16 \$1,000.00 for each violation of section 22(3), in addition to or
17 in lieu of revocation or suspension of the license, which penalty
18 shall be paid to the commission and deposited with the state
19 treasurer and shall be credited to the general fund of the
20 state. The commission shall hold a hearing and order the suspen-
21 sion or revocation of a license if the licensee has been found
22 liable, within a 24-month period, for 3 or more separate viola-
23 tions of section 22(3) which violations occurred on different
24 occasions. FOR PURPOSES OF THIS SUBSECTION, THE DATE ON WHICH
25 THE DEFENDANT COMMITTED A VIOLATION IS CONTROLLING IN DETERMINING
26 WHETHER 3 VIOLATIONS HAVE OCCURRED WITHIN A 24-MONTH PERIOD.

1 (2) The commission shall provide the procedure by which any
2 licensee feeling aggrieved by any penalty imposed under
3 subsection (1) and any suspension or revocation of a license
4 ordered by the commission, a commissioner, or a duly authorized
5 agent of the commission, may request a hearing for the purpose of
6 presenting any facts or reasons to the commission why the penalty
7 or the suspension or revocation should be modified or rescinded.
8 Any such request shall be in writing and accompanied by a fee of
9 \$25.00. The commission after reviewing the record made before a
10 commissioner or a duly authorized agent of the commission may
11 allow or refuse to allow the hearing in accordance with the
12 commission's rules. Such right, however, shall not be interpre-
13 ted by any court as curtailing, removing, or annulling the right
14 of the commission to suspend or revoke licenses as provided for
15 in this act. A licensee shall not have a right of appeal from
16 the final determination of the commission, except by ~~writ of~~
17 ~~certiorari to~~ LEAVE OF the circuit court. Notice of the order
18 of suspension or revocation of a license or assessment of a pen-
19 alty, or both, shall be given in the manner prescribed by the
20 commission. The suspension or revocation of a license or assess-
21 ment of a penalty, or both, by the commission or a duly autho-
22 rized agent of the commission shall not prohibit the institution
23 of a criminal prosecution for a violation of this act. The
24 institution of a criminal prosecution for a violation of this
25 act, or the acquittal or conviction of any person for a violation
26 of this act, shall not prevent the suspension or revocation of a
27 license or assessment of a penalty, or both, by the commission.

1 In a hearing for the suspension or revocation of a license issued
2 pursuant to this act, proof that the defendant licensee or an
3 agent or employee of the licensee demanded and was shown, before
4 furnishing any alcoholic liquor to a person less than 21 years of
5 age, a motor vehicle operator or chauffeur license, a registra-
6 tion certificate issued by the federal selective service, or
7 other bona fide documentary evidence of majority and identity of
8 the person, may be offered as evidence in a defense to a proceed-
9 ing for the suspension or revocation of a license issued under
10 this act. A licensee who has reason to believe that a person
11 less than 21 years of age has used fraudulent identification to
12 purchase alcoholic liquor in violation of section 33b shall file
13 a police report concerning the violation with a local law
14 enforcement agency and shall also present the alleged fraudulent
15 identification to the local law enforcement agency at the time of
16 filing the report if the identification is in the possession of
17 the licensee. The commission may promulgate rules pursuant to
18 the administrative procedures act of 1969, Act No. 306 of the
19 Public Acts of 1969, being sections 24.201 to 24.328 of the
20 Michigan Compiled Laws, regarding the utilization by licensees of
21 equipment designed to detect altered or forged driver licenses,
22 state identification cards, and other forms of identification.

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

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

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