

HOUSE BILL No. 5308

October 31, 1991, Introduced by Reps. Martin, Nye, Horton, Dolan, Oxender, Dalman, Jamian, Middleton and London and referred to the Committee on Judiciary.

A bill to amend sections 33a and 33b of Act No. 8 of the Public Acts of the Extra Session of 1933, entitled as amended "The Michigan liquor control act," section 33a as amended by Act No. 123 of the Public Acts of 1985 and section 33b as amended by Act No. 176 of the Public Acts of 1986, being sections 436.33a and 436.33b of the Michigan Compiled Laws; and to add section 33d.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 33a and 33b of Act No. 8 of the Public
2 Acts of the Extra Session of 1933, section 33a as amended by Act
3 No. 123 of the Public Acts of 1985 and section 33b as amended by
4 Act No. 176 of the Public Acts of 1986, being sections 436.33a
5 and 436.33b of the Michigan Compiled Laws, are amended and
6 section 33d is added to read as follows:

1 Sec. 33a. (1) A person less than 21 years of age shall not
2 knowingly transport or possess, in a motor vehicle, alcoholic
3 liquor unless the person is employed by a licensee under this
4 act, a common carrier designated by the commission, the liquor
5 control commission, or an agent of the liquor control commission
6 and is transporting or having the alcoholic liquor in a motor
7 vehicle under the person's control during regular working hours
8 and in the course of the person's employment. FOR PURPOSES OF
9 THIS SECTION, POSSESSION OF ALCOHOLIC LIQUOR BY A PERSON LESS
10 THAN 21 YEARS OF AGE INCLUDES THE MEASURABLE OR DETECTABLE PRES-
11 ENCE OF ALCOHOL IN THE PERSON'S BODY. A person who violates this
12 subsection is guilty of a misdemeanor. THE COURT SHALL ORDER THE
13 SECRETARY OF STATE TO SUSPEND FOR 1 YEAR THE OPERATOR'S OR
14 CHAUFFEUR'S LICENSE OF A PERSON WHO VIOLATES THIS SUBSECTION.
15 THE PERSON SHALL SURRENDER HIS OR HER OPERATOR'S OR CHAUFFEUR'S
16 LICENSE TO THE COURT. THE COURT SHALL IMMEDIATELY FORWARD THE
17 SURRENDERED LICENSE AND A CERTIFICATE OF CONVICTION TO THE SECRE-
18 TARY OF STATE.

19 (2) Within 30 days after the conviction of a person for the
20 violation of subsection (1), which conviction has become final,
21 complaint may be made by the arresting officer or the officer's
22 superior before the court from which the warrant was issued. ~~—~~
23 ~~which~~ THE complaint shall be under oath and shall contain a
24 description of the motor vehicle in which alcoholic liquor was
25 possessed or transported by the person less than 21 years of age
26 in committing the offense and praying that the motor vehicle be
27 impounded as provided in this section. Upon the filing of the

1 complaint, the court shall issue an order to the owner of the
2 motor vehicle to show cause why the motor vehicle shall not be
3 impounded. The order to show cause shall ~~have~~ FIX a date and
4 time ~~fixed in the order~~ for a hearing ~~, which date shall~~ not
5 ~~be~~ less than 10 days after the issuance of the order, and shall
6 be served by delivering a true copy to the owner not less than 3
7 full days before the date of hearing or, if the owner cannot be
8 located, by sending a true copy by certified mail to the last
9 known address of the owner. If the owner is a nonresident of the
10 state, service may be made upon the secretary of state as pro-
11 vided in section 403 of the Michigan vehicle code, Act No. 300 of
12 the Public Acts of 1949, as amended, being section 257.403 of the
13 Michigan Compiled Laws.

14 (3) If the court determines upon the hearing of the order to
15 show cause, from competent and relevant evidence, that at the
16 time of the commission of the offense the motor vehicle was being
17 driven by the person less than 21 years of age with the express
18 or implied consent or knowledge of the owner, and that the use of
19 the motor vehicle is not needed by the owner in the direct pur-
20 suit of the owner's employment or the actual operation of the
21 owner's business, the court shall authorize the impounding of the
22 vehicle for a period ~~to be determined by the court,~~ of not less
23 than 15 days ~~nor~~ OR more than 30 days. The court's order
24 authorizing the impounding of the vehicle shall authorize a law
25 enforcement officer to take possession without other process of
26 the motor vehicle wherever located and to store the vehicle in a
27 public or private garage at the expense and risk of the owner of

1 the vehicle. Appeal shall lie from the order to the circuit
2 court of the county and the provisions governing the taking of
3 appeals from judgments for damages ~~shall be applicable~~ APPLY to
4 the appeal. This section ~~shall~~ DOES not prevent a bona fide
5 lienholder from exercising rights under a lien.

6 (4) A person who knowingly transfers title to a motor vehi-
7 cle for the purpose of avoiding this section is guilty of a
8 misdemeanor.

9 Sec. 33b. (1) A person less than 21 years of age shall not
10 purchase alcoholic liquor, consume alcoholic liquor in a licensed
11 premises, or possess alcoholic liquor, except as provided in sec-
12 tion 33a(1) of this act. A person less than 21 years of age who
13 violates this subsection is liable for the following civil fines
14 and shall not be subject to the penalties prescribed in section
15 50:

16 (i) For the first violation a fine of not more than \$25.00.

17 (ii) For a second violation a fine of not more than \$50.00,
18 or participation in substance abuse prevention services as
19 defined in section 6107 of the public health code, Act No. 368 of
20 the Public Acts of 1978, being section 333.6107 of the Michigan
21 Compiled Laws, and designated by the administrator of substance
22 abuse services, or both.

23 (iii) For a third or subsequent violation a fine of not more
24 than \$100.00, or participation in substance abuse prevention
25 services as defined in section 6107 of the public health code,
26 Act No. 368 of the Public Acts of 1978, and designated by the
27 administrator of substance abuse services, or both.

1 (2) Fifty percent of the fines collected under subsection
2 (1) shall be deposited with the state treasurer for deposit in
3 the general fund to the credit of the department of public health
4 for substance abuse treatment and rehabilitation services.

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

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

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

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

7 (7) FOR PURPOSES OF THIS SECTION, POSSESSION OF ALCOHOLIC
8 LIQUOR BY A PERSON LESS THAN 21 YEARS OF AGE INCLUDES THE MEASUR-
9 ABLE OR DETECTABLE PRESENCE OF ALCOHOL IN THE PERSON'S BODY.

10 SEC. 33D. (1) A PEACE OFFICER WHO HAS REASONABLE CAUSE TO
11 BELIEVE A PERSON LESS THAN 21 YEARS OF AGE HAS VIOLATED SECTION
12 33A(1) OR 33B(1) BY HAVING A MEASURABLE OR DETECTABLE PRESENCE OF
13 ALCOHOL IN THE PERSON'S BODY MAY REQUIRE THE PERSON TO SUBMIT TO
14 A PRELIMINARY CHEMICAL BREATH ANALYSIS.

15 (2) THE PEACE OFFICER MAY ARREST A PERSON FOR A VIOLATION OF
16 SECTION 33A(1) BASED IN WHOLE OR IN PART UPON THE RESULTS OF A
17 PRELIMINARY CHEMICAL BREATH TEST.

18 (3) THE RESULTS OF THE PRELIMINARY CHEMICAL BREATH TEST ARE
19 ADMISSIBLE IN A PROCEEDING FOR A VIOLATION OF SECTION 33A(1) OR
20 33B(1).

21 (4) A PERSON WHO REFUSES TO SUBMIT TO A PRELIMINARY CHEMICAL
22 BREATH ANALYSIS UPON A LAWFUL REQUEST BY A PEACE OFFICER IS
23 RESPONSIBLE FOR A CIVIL INFRACTION, FOR WHICH THE PEACE OFFICER
24 MAY ISSUE AN APPEARANCE TICKET. THE PROCEDURE FOR AN APPEARANCE
25 TICKET UNDER THIS SECTION SHALL FOLLOW THE PROCEDURE OUTLINED IN
26 SECTION 33C.