



HOUSE BILL No. 5550

January 31, 1996, Introduced by Reps. Ryan, Fitzgerald, Dalman, Cropsey, Nye and Bush and referred to the Committee on Judiciary and Civil Rights.

A bill to amend section 33b of Act No. 8 of the Public Acts of the Extra Session of 1933, entitled as amended "The Michigan liquor control act," as amended by Act No. 122 of the Public Acts of 1995, being section 436.33b of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 33b of Act No. 8 of the Public Acts of
2 the Extra Session of 1933, as amended by Act No. 122 of the
3 Public Acts of 1995, being section 436.33b of the Michigan
4 Compiled Laws, is amended to read as follows:

5 Sec. 33b. (1) A person less than 21 years of age shall not
6 purchase or attempt to purchase alcoholic liquor, consume or
7 attempt to consume alcoholic liquor, or possess or attempt to
8 possess alcoholic liquor, except as provided in this section and
9 section 33a(1). Notwithstanding section 50, a person less than

1 21 years of age who violates this subsection is guilty of a
2 misdemeanor punishable by the following fines and sanctions, and
3 is not subject to the penalties prescribed in section 50:

4 (a) For the first violation a fine of not more than \$100.00
5 and may be ordered to perform community service and to undergo
6 substance abuse screening and assessment at his or her own
7 expense as described in subsection ~~(4)~~ (3).

8 (b) For a second violation a fine of not more than \$200.00,
9 and may be ordered to participate in substance abuse prevention
10 or substance abuse treatment and rehabilitation services as
11 defined in section 6107 of the public health code, Act No. 368 of
12 the Public Acts of 1978, being section 333.6107 of the Michigan
13 Compiled Laws, and designated by the administrator of substance
14 abuse services, to perform community service, and to undergo sub-
15 stance abuse screening and assessment at his or her own expense
16 as described in subsection ~~(4)~~ (3). The person is also subject
17 to sanctions against his or her operator's or chauffeur's license
18 imposed in subsection ~~(5)~~ (4).

19 (c) For a third or subsequent violation a fine of not more
20 than \$500.00, and may be ordered to participate in substance
21 abuse prevention or substance abuse treatment and rehabilitation
22 services as defined in section 6107 of Act No. 368 of the Public
23 Acts of 1978, and designated by the administrator of substance
24 abuse services, to perform community service, and to undergo sub-
25 stance abuse screening and assessment at his or her own expense
26 as described in subsection ~~(4)~~ (3). The person is also subject

1 to sanctions against his or her operator's or chauffeur's license
2 imposed in subsection ~~(5)~~ (4).

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

8 (2) ~~(3)~~ A person who furnishes fraudulent identification
9 to a person less than 21 years of age, or notwithstanding subsec-
10 tion (1) a person less than 21 years of age who uses fraudulent
11 identification to purchase alcoholic liquor, is guilty of a
12 misdemeanor. The court shall order the secretary of state to
13 suspend, pursuant to section 319(5) of Act No. 300 of the Public
14 Acts of 1949, being section 257.319 of the Michigan Compiled
15 Laws, for a period of 90 days, the operator or chauffeur license
16 of a person who is convicted of furnishing or using fraudulent
17 identification in violation of this subsection and the operator
18 or chauffeur license of that person shall be surrendered to the
19 court. The court shall immediately forward the surrendered
20 license and an abstract of conviction to the secretary of state.
21 A suspension ordered under this subsection shall be in addition
22 to any other suspension of the person's operator or chauffeur
23 license.

24 (3) ~~(4)~~ The court may order the person found violating
25 subsection (1) to undergo screening and assessment by a person or
26 agency as designated by the substance abuse coordinating agency
27 as defined in section 6103 of Act No. 368 of the Public Acts of

1 1978, being section 333.6103 of the Michigan Compiled Laws, in
2 order to determine whether the person is likely to benefit from
3 rehabilitative services, including alcohol or drug education and
4 alcohol or drug treatment programs.

5 (4) ~~(5)~~ Immediately upon the entry of a conviction or a
6 probate court disposition for a violation of subsection (1), the
7 court shall consider all prior convictions or probate court dis-
8 positions of subsection (1), or a local ordinance or law of
9 another state substantially corresponding to subsection (1), and
10 shall impose the following sanctions:

11 (a) If the court finds that the person has 1 such prior con-
12 viction or probate court disposition, the court shall order the
13 secretary of state to suspend the operator's or chauffeur's
14 license of the person for a period of not less than 90 days or
15 more than 180 days. The court may order the secretary of state
16 to issue to the person a restricted license after the first 30
17 days of the period of suspension in the manner described in sub-
18 section ~~(6)~~ (5) and provided for in section 319 of Act No. 300
19 of the Public Acts of 1949, being section 257.319 of the Michigan
20 Compiled Laws. In the case of a person who does not possess an
21 operator's or chauffeur's license, the secretary of state shall
22 deny the application for an operator's or chauffeur's license for
23 the applicable suspension period.

24 (b) If the court finds that the person has 2 or more such
25 prior convictions or probate court dispositions, the court shall
26 order the secretary of state to suspend the operator's or
27 chauffeur's license of the person for a period of not less than

1 180 days or more than 1 year. The court may order the secretary
2 of state to issue to the person a restricted license after the
3 first 60 days of the period of suspension in the manner described
4 in subsection ~~(6)~~ (5) and provided for in section 319 of Act
5 No. 300 of the Public Acts of 1949, being section 257.319 of the
6 Michigan Compiled Laws. In the case of a person who does not
7 possess an operator's or chauffeur's license, the secretary of
8 state shall deny the application for an operator's or chauffeur's
9 license for the applicable suspension period.

10 (5) ~~(6)~~ In those cases in which a restricted license is
11 allowed under this section, the court shall not order the secre-
12 tary of state to issue a restricted license unless the person
13 states under oath, and the court finds based upon the record in
14 open court, that the person is unable to take public transporta-
15 tion to and from his or her work location, place of alcohol or
16 drug education treatment, probation department, court-ordered
17 community service program, or educational institution, and does
18 not have any family members or others able to provide
19 transportation. The court order under subsection ~~(5)~~ (4) and
20 the restricted license shall indicate the work location of the
21 person to whom it is issued, the approved route or routes and
22 permitted times of travel, and shall permit the person to whom it
23 is issued only to do 1 or more of the following:

24 (a) Drive to and from the person's residence and work
25 location.

26 (b) Drive in the course of the person's employment or
27 occupation.

1 (c) Drive to and from the person's residence and an alcohol
2 or drug education or treatment program as ordered by the court.

3 (d) Drive to and from the person's residence and the court
4 probation department, or a court-ordered community service pro-
5 gram, or both.

6 (e) Drive to and from the person's residence and an educa-
7 tional institution at which the person is enrolled as a student.

8 (6) ~~(7)~~ If license sanctions are imposed, immediately upon
9 the entry of a court-ordered sanction pursuant to subsection
10 ~~(5)~~ (4), the court shall order the person convicted for the
11 violation to surrender to the court his or her operator's or
12 chauffeur's license. The court shall immediately forward a
13 notice of court-ordered license sanctions to the secretary of
14 state. If the license is not forwarded to the secretary of
15 state, an explanation of the reason why the license is absent
16 shall be attached. If the finding is reviewed by the circuit
17 court, the court may, ex parte, order the secretary of state to
18 rescind the suspension or restricted license issued pursuant to
19 this section. Immediately following imposition of the sanction,
20 the court shall forward a notice to the secretary of state indi-
21 cating the sanction imposed.

22 (7) ~~(8)~~ A peace officer who has reasonable cause to
23 believe a person less than 21 years of age has consumed alcoholic
24 liquor may require the person to submit to a preliminary chemical
25 breath analysis. A legal presumption shall be made by the court
26 that the person less than 21 years of age has consumed or
27 possessed alcoholic liquor if a preliminary chemical breath

1 analysis or other acceptable blood alcohol test indicates the
2 person's blood contained .02% or more by weight of alcohol. A
3 person less than 21 years of age who refuses to submit to a pre-
4 liminary chemical breath test analysis as required in this sub-
5 section is responsible for a state civil infraction AND MAY BE
6 ORDERED TO PAY A CIVIL FINE OF NOT MORE THAN \$100.00.

7 (8) ~~(9)~~ A law enforcement agency, upon determining that a
8 person less than 18 years of age who is not emancipated pursuant
9 to Act No. 293 of the Public Acts of 1968, being sections 772.1
10 to 772.6 of the Michigan Compiled Laws, allegedly consumed, pos-
11 sessed, purchased, or attempted to consume, possess, or purchase
12 alcoholic liquor in violation of subsection (1) shall notify the
13 parent or parents, custodian, or guardian of the person as to the
14 nature of the violation if the name of a parent, guardian, or
15 custodian is reasonably ascertainable by the law enforcement
16 agency. The notice required by this subsection shall be made not
17 later than 48 hours after the law enforcement agency determines
18 that the person who allegedly violated subsection (1) is less
19 than 18 years of age and not emancipated pursuant to Act No. 293
20 of the Public Acts of 1968. The notice may be made by any means
21 reasonably calculated to give prompt actual notice including, but
22 not limited to, notice in person, by telephone, or by first-class
23 mail. If a person less than 17 years of age is incarcerated for
24 violating subsection (1), then his or her parents or legal guard-
25 ian shall be notified immediately as provided in this
26 subsection.

1 (9) ~~(+10)~~ This section does not prohibit a person less than
2 21 years of age from possessing alcoholic liquor during regular
3 working hours and in the course of his or her employment if
4 employed by a person licensed by this act, by the commission, or
5 by an agent of the commission, if the alcoholic liquor is not
6 possessed for his or her personal consumption.

7 (10) ~~(+11)~~ This section shall not be construed to limit the
8 civil or criminal liability of the vendor or the vendor's clerk,
9 servant, agent, or employee for a violation of this act.

10 (11) ~~(+12)~~ The consumption of alcoholic liquor by a person
11 less than 21 years of age who is enrolled in a course offered by
12 an accredited post secondary educational institution in an aca-
13 demic building of the institution under the supervision of a fac-
14 ulty member is not prohibited by this act if the purpose of the
15 consumption is solely educational and is a necessary ingredient
16 of the course.

17 (12) ~~(+13)~~ The consumption by a person less than 21 years
18 of age of sacramental wine in connection with religious services
19 at a church, synagogue, or temple is not prohibited by this act.

20 (13) ~~(+14)~~ Subsection (1) does not apply to a person less
21 than 21 years of age who participates in either or both of the
22 following:

23 (a) An undercover operation in which the person less than 21
24 years of age purchases or receives alcoholic liquor under the
25 direction of the person's employer and with the prior approval of
26 the local prosecutor's office as part of an employer-sponsored
27 internal enforcement action.

1 (b) An undercover operation in which the person less than 21
2 years of age purchases or receives alcoholic liquor under the
3 direction of the state police, the commission, or a local police
4 agency as part of an enforcement action except that any initial
5 or contemporaneous purchase or receipt of alcoholic liquor by the
6 person less than 21 years of age is under the direction of the
7 state police, the commission, or the local police agency and is
8 part of the undercover operation. The state police, the commis-
9 sion, or a local police agency shall not recruit or attempt to
10 recruit a person less than 21 years of age for participation in
11 an undercover operation at the scene of a violation of
12 subsection (1), section 22(3), or section 33(1).

13 (14) ~~(15)~~ As used in this section:

14 (a) "Probate court disposition" means a probate court order
15 of disposition for a child found to be within the provisions of
16 chapter XIIIA of Act No. 288 of the Public Acts of 1939, being
17 sections 712A.1 to 712A.31 of the Michigan Compiled Laws.

18 (b) "Work location" means, as applicable, either the spe-
19 cific place or places of employment, or the territory or territo-
20 ries regularly visited by the person in pursuance of the person's
21 occupation, or both.