

HOUSE BILL No. 6297

November 12, 1998, Introduced by Reps. Kelly, Scott, DeHart and Schermesser and referred to the Committee on Regulatory Affairs.

A bill to amend 1998 PA 58, entitled
"Michigan liquor control code of 1998,"
(MCL 436.1101 to 436.2303) by adding section 702.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 702. (1) FOUR OR MORE VIOLATIONS OF SECTION 701 MAY BE
2 TREATED AS A NUISANCE AND ABATED UNDER THE PROCEDURE DESCRIBED IN
3 CHAPTER 38 OF THE REVISED JUDICATURE ACT OF 1961, 1961 PA 236,
4 MCL 600.3801 TO 600.3840.

5 (2) IN ADDITION TO ANY OTHER RIGHTS APPLICABLE, THE PARENT
6 OR LEGAL GUARDIAN OF A MINOR WHO WAS SOLD, FURNISHED, OR GIVEN
7 ALCOHOLIC LIQUOR BY A RETAIL LICENSEE IN VIOLATION OF SECTION 701
8 MAY BRING A CIVIL ACTION UNDER THIS ACT FOR DAMAGES AGAINST THE
9 RETAIL LICENSEE WHO SOLD, FURNISHED, OR GAVE ALCOHOLIC LIQUOR TO
10 THE MINOR IN VIOLATION OF SECTION 701. THE PARENT OR LEGAL
11 GUARDIAN OF A MINOR WHO WAS SOLD, FURNISHED, OR GIVEN ALCOHOLIC

1 LIQUOR BY A RETAIL LICENSEE MAY RECOVER DAMAGES IN AN AMOUNT UP
2 TO \$700.00 TOGETHER WITH REASONABLE ATTORNEY FEES AND COSTS FROM
3 THE RETAIL LICENSEE.

4 (3) THE PARENT OR LEGAL GUARDIAN OF A MINOR DESCRIBED IN
5 SUBSECTION (1) OR AN ORGANIZATION ACTING ON BEHALF AND WITH THE
6 CONSENT OF THE PARENT OR LEGAL GUARDIAN SHALL REPORT A VIOLATION
7 OF SECTION 701 THAT IS THE BASIS FOR A CIVIL ACTION UNDER SUBSEC-
8 TION (2) TO THE LOCAL HEALTH DEPARTMENT WITH JURISDICTION OVER
9 THE GEOGRAPHIC LOCATION IN WHICH THE REPORTED VIOLATION OF SEC-
10 TION 701 TOOK PLACE. THE LOCAL HEALTH DEPARTMENT SHALL PROVIDE
11 REFERRAL INTO A SCREENING AND ASSESSMENT PROGRAM DESCRIBED IN
12 SECTION 703(3) FOR THE MINOR DESCRIBED IN SUBSECTION (1).

13 (4) A LOCAL HEALTH DEPARTMENT MAY CONDUCT COVERT COMPLIANCE
14 CHECKS UPON RETAIL LICENSEES THAT ARE REPORTED UNDER THIS SECTION
15 TO BE VIOLATING SECTION 701. A LOCAL HEALTH DEPARTMENT THAT
16 RECEIVES A REPORT UNDER THIS SECTION MAY ALSO MAKE A REFERRAL
17 NOTIFICATION TO A LOCAL LAW ENFORCEMENT AGENCY. A LOCAL HEALTH
18 DEPARTMENT MAY USE EMPLOYEES AND OTHER INDIVIDUALS TO CONDUCT THE
19 COVERT COMPLIANCE CHECKS PERMITTED UNDER THIS SUBSECTION. A
20 COVERT COMPLIANCE CHECK PERMITTED UNDER THIS SUBSECTION SHALL
21 MINIMALLY CONSIST OF A TEAM OF 1 MINOR AND 1 ADULT EMPLOYEE OR
22 OTHER INDIVIDUAL. IF A COMPLIANCE CHECK TEAM WITNESSES A RETAIL
23 LICENSEE OR AN EMPLOYEE OR AGENT OF THE RETAIL LICENSEE ATTEMPT
24 TO SELL, FURNISH, OR GIVE ALCOHOLIC LIQUOR TO A MINOR IN VIOLA-
25 TION OF SECTION 701, A REBUTTABLE PRESUMPTION ARISES THAT A VIO-
26 LATION OF SECTION 701 HAS OCCURRED.

1 (5) A LOCAL HEALTH DEPARTMENT MAY COMMENCE AN ACTION IN
2 SMALL CLAIMS COURT AGAINST A RETAIL LICENSEE SUSPECTED OF
3 VIOLATING SECTION 701. PURSUANT TO SECTION 8408 OF THE REVISED
4 JUDICATURE ACT OF 1961, 1961 PA 236, MCL 600.8408, NEITHER PARTY
5 MAY BE REPRESENTED BY AN ATTORNEY. HOWEVER, EITHER PARTY MAY
6 HAVE AN ATTORNEY PRESENT AS A SPECTATOR TO THE PROCEEDINGS. IF
7 THE COURT FINDS A RETAIL LICENSEE OR HIS OR HER EMPLOYEE IN VIO-
8 LATION OF SECTION 701, THE COURT SHALL ORDER THE RETAIL LICENSEE
9 TO PAY \$700.00 PLUS COSTS TO THE LOCAL HEALTH DEPARTMENT.

10 (6) A LOCAL HEALTH DEPARTMENT THAT OBTAINS A JUDGMENT UNDER
11 SUBSECTION (5) AND COLLECTS ON THE JUDGMENT SHALL DISBURSE THE
12 \$700.00 ACCORDING TO THE FOLLOWING FORMULA:

13 (A) THE LOCAL HEALTH DEPARTMENT SHALL DISBURSE \$200.00 TO
14 THE PARENT OR LEGAL GUARDIAN OR ORGANIZATION ACTING ON BEHALF AND
15 WITH THE CONSENT OF THE PARENT OR LEGAL GUARDIAN THAT INITIALLY
16 REPORTED THE VIOLATION TO THE LOCAL HEALTH DEPARTMENT UNDER SUB-
17 SECTION (3).

18 (B) THE LOCAL HEALTH DEPARTMENT MAY RETAIN NOT MORE THAN
19 \$200.00 SOLELY FOR THE PURPOSE OF HIRING EMPLOYEES TO PUBLICIZE
20 AND IMPLEMENT THIS SECTION AND SECTION 701.

21 (C) THE LOCAL HEALTH DEPARTMENT SHALL DISBURSE THE REMAINDER
22 OF THE FUNDS TO ALCOHOL SCREENING AND ASSESSMENT PROGRAMS OR TO
23 EARLY INTERVENTION PROGRAMS WITHIN THE LOCAL HEALTH DEPARTMENT'S
24 JURISDICTION THAT ARE DESIGNED TO STOP UNDERAGE USE OF ALCOHOL.

25 (7) IF A SUBSEQUENT VIOLATION OF SECTION 701 BY THE SAME
26 RETAIL LICENSEE IS REPORTED TO OR WITNESSED BY THE LOCAL HEALTH
27 DEPARTMENT UNDER SUBSECTION (3) OR (4), THE RETAIL LICENSEE IS

1 SUBJECT TO SUBSECTIONS (5) AND (6) OR TO LAW ENFORCEMENT
2 REFERRAL. IF THE SUBSEQUENT VIOLATION IS REFERRED TO A LAW
3 ENFORCEMENT AGENCY, THE RETAIL LICENSEE IS SUBJECT TO THE GRADU-
4 ATED AND INCREASED PENALTIES IN SUBSECTION (8).

5 (8) A LAW ENFORCEMENT AGENCY WITH APPROPRIATE JURISDICTION
6 MAY INVESTIGATE A SUSPECTED VIOLATION OF SECTION 701 WITH OR
7 WITHOUT REFERRAL FROM THE LOCAL HEALTH DEPARTMENT UNDER THIS
8 SECTION. IN ADDITION TO THE CRIMINAL SANCTIONS IN SECTION 701
9 AND THE SANCTIONS CONTAINED IN SECTIONS 903 AND 905, IF THE LAW
10 ENFORCEMENT AGENCY DETERMINES THAT A RETAIL LICENSEE HAS SUBSE-
11 QUENTLY VIOLATED SECTION 701, THE RETAIL LICENSEE IS SUBJECT TO
12 THE FOLLOWING:

13 (A) FOR THE FIRST VIOLATION, A \$700.00 ADMINISTRATIVE FINE
14 PAID TO THE LAW ENFORCEMENT AGENCY. THE LAW ENFORCEMENT AGENCY
15 MAY ENFORCE THIS SECTION BY COMMENCING AN ACTION WITH THE SMALL
16 CLAIMS COURT. NEITHER PARTY MAY BE REPRESENTED BY AN ATTORNEY.
17 HOWEVER, EITHER PARTY MAY HAVE AN ATTORNEY PRESENT AS A SPECTATOR
18 TO THE PROCEEDINGS. IF THE COURT FINDS A SUBSEQUENT VIOLATION OF
19 SECTION 701, THE COURT SHALL ORDER THE RETAIL LICENSEE TO PAY
20 \$700.00 PLUS COSTS TO THE LAW ENFORCEMENT AGENCY. A LAW ENFORCE-
21 MENT AGENCY THAT OBTAINS A JUDGMENT UNDER THIS SUBDIVISION AND
22 COLLECTS ON THE JUDGMENT SHALL DISBURSE THE \$700.000 PAYMENT
23 ACCORDING TO THE FOLLOWING FORMULA:

24 (i) THE LAW ENFORCEMENT AGENCY SHALL DISBURSE \$200.00 TO THE
25 PROSECUTING ATTORNEY FOR THE COUNTY IN WHICH THE VIOLATION
26 OCCURRED. THE COUNTY PROSECUTING ATTORNEY SHALL USE THE MONEY

1 EXCLUSIVELY TO HIRE STAFF AND ACQUIRE RESOURCES TO IMPLEMENT AND
2 PUBLICIZE THIS SECTION AND SECTION 701.

3 (ii) THE LAW ENFORCEMENT AGENCY SHALL DISBURSE \$500.00 TO
4 THE BUDGET OF THE SQUAD WITHIN THE LAW ENFORCEMENT AGENCY THAT IS
5 RESPONSIBLE FOR THE ENFORCEMENT OF THIS SECTION AND SECTION 701.
6 THE SQUAD SHALL USE THE MONEY EXCLUSIVELY TO HIRE STAFF AND
7 ACQUIRE RESOURCES TO IMPLEMENT AND PUBLICIZE THIS SECTION AND
8 SECTION 701.

9 (B) IF A LOCAL HEALTH DEPARTMENT HAS SUCCESSFULLY PROSECUTED
10 1 OR MORE VIOLATIONS OF SECTION 701 AGAINST A RETAIL LICENSEE
11 WITHIN A CONSECUTIVE 24-MONTH PERIOD, THEN THE FIRST TIME A VIO-
12 LATION OF SECTION 701 IS DETECTED BY A LAW ENFORCEMENT AGENCY
13 WITHIN THAT SAME TIME PERIOD, IT SHALL BE TREATED AS A SECOND OR
14 SUBSEQUENT OFFENSE, IF THE LAW ENFORCEMENT AGENCY IS ACTING UPON
15 THE REFERRAL OF THE LOCAL HEALTH DEPARTMENT. THE LAW ENFORCEMENT
16 AGENCY SHALL ENFORCE A VIOLATION DESCRIBED IN THIS SUBDIVISION BY
17 FILING A MOTION WITH THE CIRCUIT COURT. IF THE COURT FINDS THE
18 RETAIL LICENSEE IN VIOLATION OF SECTION 701 FOR A SECOND OR SUB-
19 SEQUENT TIME, THE COURT SHALL ORDER THE RETAIL LICENSEE TO PAY
20 \$1,000.00 PLUS COSTS TO THE LAW ENFORCEMENT AGENCY. THE LAW
21 ENFORCEMENT AGENCY SHALL DISBURSE THE \$1,000.00 PAYMENT ACCORDING
22 TO THE FOLLOWING FORMULA:

23 (i) THE LAW ENFORCEMENT AGENCY SHALL DISBURSE \$250.00 TO THE
24 COUNTY PROSECUTING ATTORNEY FOR THE JURISDICTION WHERE THE VIOLA-
25 TION OCCURRED. THE COUNTY PROSECUTING ATTORNEY SHALL USE THE
26 MONEY EXCLUSIVELY TO HIRE STAFF AND ACQUIRE RESOURCES TO
27 IMPLEMENT AND PUBLICIZE THIS SECTION AND SECTION 701.

1 (ii) THE LAW ENFORCEMENT AGENCY SHALL DISBURSE \$550.00 TO
2 THE BUDGET OF THE SQUAD WITHIN THE LAW ENFORCEMENT AGENCY THAT IS
3 RESPONSIBLE FOR THE ENFORCEMENT OF THIS SECTION AND SECTION 701.
4 THE SQUAD SHALL USE THE MONEY EXCLUSIVELY TO HIRE STAFF AND
5 ACQUIRE RESOURCES TO IMPLEMENT AND PUBLICIZE THIS SECTION AND
6 SECTION 701.

7 (iii) THE LAW ENFORCEMENT AGENCY SHALL DISBURSE \$200.00 TO
8 THE LOCAL HEALTH DEPARTMENT. THE LOCAL HEALTH DEPARTMENT SHALL
9 USE THE MONEY EXCLUSIVELY TO HIRE EMPLOYEES TO PUBLICIZE AND
10 IMPLEMENT THIS SECTION AND SECTION 701.

11 (c) FOR A THIRD VIOLATION WITHIN A CONSECUTIVE 24-MONTH
12 PERIOD, A RETAIL LICENSEE IS SUBJECT TO A \$1,400.00 ADMINISTRA-
13 TIVE FINE TO BE PAID TO THE LOCAL LAW ENFORCEMENT AGENCY. THE
14 LAW ENFORCEMENT AGENCY MAY ENFORCE THIS SUBDIVISION BY FILING A
15 MOTION WITH THE CIRCUIT COURT. IF THE CIRCUIT COURT FINDS THE
16 RETAIL LICENSEE TO BE IN VIOLATION OF THIS SUBDIVISION, THE CIR-
17 CUIT COURT SHALL ORDER THE RETAIL LICENSEE TO PAY THE \$1,400.00
18 PLUS COSTS TO THE LAW ENFORCEMENT AGENCY. THE LAW ENFORCEMENT
19 AGENCY SHALL DISBURSE THE \$1,400.00 PAYMENT ACCORDING TO THE FOL-
20 LOWING FORMULA:

21 (i) THE LAW ENFORCEMENT AGENCY SHALL DISBURSE \$400.00 TO THE
22 COUNTY PROSECUTING ATTORNEY FOR THE COUNTY IN WHICH THE VIOLATION
23 OCCURRED. THE COUNTY PROSECUTING ATTORNEY SHALL USE THE MONEY
24 EXCLUSIVELY TO HIRE STAFF AND ACQUIRE RESOURCES TO IMPLEMENT AND
25 PUBLICIZE THIS SECTION AND SECTION 701.

26 (ii) THE LAW ENFORCEMENT AGENCY SHALL DISBURSE \$700.00 TO
27 THE BUDGET OF THE SQUAD WITHIN THE LAW ENFORCEMENT AGENCY THAT IS

1 RESPONSIBLE FOR THE ENFORCEMENT OF THIS SECTION AND SECTION 701.
2 THE SQUAD SHALL USE THE MONEY EXCLUSIVELY TO HIRE STAFF AND
3 ACQUIRE RESOURCES TO IMPLEMENT AND PUBLICIZE THIS SECTION AND
4 SECTION 701.

5 (iii) THE LAW ENFORCEMENT AGENCY SHALL DISBURSE \$300.00 TO
6 THE LOCAL HEALTH DEPARTMENT WITH JURISDICTION FOR THE LOCAL GOV-
7 ERNMENTAL UNIT IN WHICH THE VIOLATION OCCURRED. THE LOCAL HEALTH
8 DEPARTMENT SHALL USE THE MONEY EXCLUSIVELY TO HIRE EMPLOYEES TO
9 PUBLICIZE AND IMPLEMENT THIS SECTION AND SECTION 701.

10 (D) IN ADDITION TO THE ADMINISTRATIVE FINES IMPOSED UNDER
11 SUBDIVISIONS (B) AND (C), THE CIRCUIT COURT SHALL ORDER A RETAIL
12 LICENSEE TO PREPARE FOR THE COURT A DETAILED ABATEMENT PLAN. THE
13 RETAIL LICENSEE SHALL PROVIDE IN THE ABATEMENT PLAN FOR 3 OR MORE
14 OF THE FOLLOWING:

15 (i) THE HIRING OF AN ON-SITE MONITOR TO PREVENT THE RECUR-
16 RENCE OF VIOLATIONS OF SECTION 701.

17 (ii) MAKING CAPITAL IMPROVEMENTS TO THE PROPERTY WHERE THE
18 VIOLATIONS OCCURRED TO PREVENT FURTHER VIOLATIONS OF SECTION 701,
19 INCLUDING, BUT NOT LIMITED TO, THE INSTALLATION OF ELECTRONIC
20 SECURITY OR VISUAL MONITORING SYSTEMS, OR BOTH.

21 (iii) DEVELOPING AND IMPLEMENTING A WRITTEN STORE POLICY TO
22 PREVENT FURTHER VIOLATIONS OF SECTION 701 AND EMPLOYING COVERT
23 TEST SHOPPERS TO DETERMINE IF ITS EMPLOYEES ARE ILLEGALLY SELLING
24 ALCOHOLIC LIQUOR TO MINORS IN VIOLATION OF THE STORE POLICY.

25 (E) FOR A FOURTH OR SUBSEQUENT VIOLATION WITHIN A CONSECU-
26 TIVE 24-MONTH PERIOD, A RETAIL LICENSEE IS SUBJECT TO A \$1,400.00
27 ADMINISTRATIVE FINE. THE LOCAL LAW ENFORCEMENT AGENCY MAY

1 ENFORCE THIS SUBDIVISION IN THE SAME MANNER AS PROVIDED FOR A
2 THIRD OFFENSE. THE CIRCUIT COURT MAY ABATE THE NUISANCE AS
3 DESCRIBED IN SUBSECTION (1). ANY FUNDS REMAINING AFTER THE NUI-
4 SANCE IS ABATED AS DESCRIBED IN SUBSECTION (1) SHALL BE DISBURSED
5 AS PROVIDED IN SUBDIVISION (C)(i). A LOCAL LAW ENFORCEMENT
6 AGENCY MAY COLLECT THE ADMINISTRATIVE FINE IMPOSED BY THIS SUBDI-
7 VISION IN THE SAME MANNER AS PROVIDED IN SUBDIVISION (C). THE
8 LAW ENFORCEMENT AGENCY SHALL DISBURSE ANY MONEY COLLECTED UNDER
9 THIS SUBDIVISION IN THE SAME MANNER AS ADMINISTRATIVE FINES ARE
10 DISBURSED UNDER SUBDIVISION (C). IN ADDITION TO OR INSTEAD OF
11 ABATING THE NUISANCE AS DESCRIBED IN SUBSECTION (1), THE CIRCUIT
12 COURT MAY ABATE THE NUISANCE BY ORDERING THE RETAIL LICENSEE TO
13 COMPLY WITH ALL OR PART OF THE ABATEMENT PLAN ORDERED UNDER SUB-
14 DIVISION (D).

15 Enacting section 1. This amendatory act does not take
16 effect unless all of the following bills of the 89th Legislature
17 are enacted into law:

18 (a) Senate Bill No. _____ or House Bill No. _____ (request
19 no. 06245'98 a).

20 (b) Senate Bill No. _____ or House Bill No. _____ (request
21 no. 06400'98).

22 (c) Senate Bill No. _____ or House Bill No. _____ (request
23 no. 06401'98).