

HOUSE BILL No. 5423

January 22, 2004, Introduced by Reps. Hardman, Spade, Smith, Phillips, McConico, Dennis, Murphy and Shaffer and referred to the Committee on Regulatory Reform.

A bill to amend 1998 PA 58, entitled
"Michigan liquor control code of 1998,"
by amending sections 701 and 903 (MCL 436.1701 and 436.1903),
section 701 as amended by 2002 PA 725 and section 903 as amended
by 2000 PA 431.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

~~1 result of an undercover operation in which the minor received~~
~~2 alcoholic liquor under the direction of the state police, the~~
~~3 commission, or a local police agency as part of an enforcement~~
~~4 action, the retail licensee's clerk, agent, or employee is~~
~~5 responsible for a state civil infraction and may be ordered to~~
~~6 pay a civil fine of not more than \$100.00~~ **is guilty of a**
7 misdemeanor punishable by imprisonment for not more than 6
8 months, a fine of not more than \$500.00 for a first offense and
9 not more than \$5,000.00 for a second or subsequent offense, or
10 both imprisonment and a fine. Except as otherwise provided in
11 subsection (2), a person who is not a retail licensee or a retail
12 licensee's clerk, agent, or employee and who violates this
13 subsection is guilty of a misdemeanor punishable by a fine of not
14 more than \$1,000.00 and imprisonment for not more than 60 days
15 for a first offense, a fine of not more than \$2,500.00 and
16 imprisonment for not more than 90 days for a second or subsequent
17 offense, and may be ordered to perform community service. A
18 suitable sign describing the content of this section and the
19 penalties for its violation shall be posted in a conspicuous
20 place in each room where alcoholic liquor is sold. The signs
21 shall be approved and furnished by the commission.

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

1 death or an accidental injury that causes that person's death.

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

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

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

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

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

27 (5) If the enforcing agency is the commission and ~~an~~

1 ~~appearance ticket or civil infraction citation has not been~~
2 ~~issued~~ **enforcement action has not been taken**, then the
3 commission shall recommend to a local law enforcement agency that
4 enforcement action be taken against a violator of this section or
5 section 703 who is not a licensee. However, subsection (4) does
6 not apply if the minor against whom enforcement action is taken
7 under section 703, the clerk, agent, or employee of the licensee
8 who directly sold or furnished alcoholic liquor to the minor, or
9 the person 21 years of age or older who sold or furnished
10 alcoholic liquor to the minor is not alive or is not present in
11 this state at the time the licensee is charged.
12 Subsection (4)(a) does not apply under either of the following
13 circumstances:

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

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

24 (6) Any initial or contemporaneous purchase or receipt of
25 alcoholic liquor by the minor under subsection (5)(a) or (b) must
26 have been under the direction of the state police, the
27 commission, or the local police agency and must have been part of

1 the undercover operation.

2 (7) If a minor participates in an undercover operation in
3 which the minor is to purchase or receive alcoholic liquor under
4 the supervision of a law enforcement agency, his or her parents
5 or legal guardian shall consent to the participation if that
6 person is less than 18 years of age.

7 (8) In an action for the violation of this section, proof
8 that the defendant or the defendant's agent or employee demanded
9 and was shown, before furnishing alcoholic liquor to a minor, a
10 motor vehicle operator's or chauffeur's license or a registration
11 certificate issued by the federal selective service, or other
12 bona fide documentary evidence of the age and identity of that
13 person, ~~shall be~~ **is** a defense to an action brought under this
14 section.

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

21 (a) Decoy operations.

22 (b) Off-premises violations.

23 (c) On-premises violations.

24 (d) Repeat offenses within the 3 years preceding the date of
25 that report.

26 (10) As used in this section:

27 (a) "Corrective action" means action taken by a licensee or a

1 clerk, agent, or employee of a licensee designed to prevent a
2 minor from further possessing or consuming alcoholic liquor on
3 the licensed premises. Corrective action includes, but is not
4 limited to, contacting a law enforcement agency and ejecting the
5 minor and any other person suspected of aiding and abetting the
6 minor.

7 (b) "Diligent inquiry" means a diligent good faith effort to
8 determine the age of a person, which includes at least an
9 examination of an official Michigan operator's or chauffeur's
10 license, an official Michigan personal identification card, or
11 any other bona fide picture identification which establishes the
12 identity and age of the person.

13 Sec. 903. (1) The commission or any commissioner or duly
14 authorized agent of the commission designated by the chairperson
15 of the commission, upon due notice and ~~proper~~ hearing, may
16 suspend or revoke any license upon a violation of this act or any
17 of the rules promulgated by the commission under this act. The
18 commission or any commissioner or duly authorized agent of the
19 commission designated by the chairperson of the commission, may
20 assess a penalty of not more than \$300.00 for each violation of
21 this act or rules promulgated under this act, or not more than
22 \$1,000.00 for each violation of section 801(2), in addition to or
23 in lieu of revocation or suspension of the license, which penalty
24 shall be paid to the commission and ~~deposited with the state~~
25 ~~treasurer and shall be~~ credited to the general fund. ~~of the~~
26 ~~state.~~ The commission shall hold a hearing and order the
27 suspension or revocation of a license if the licensee has been

1 found liable for ~~3~~ 2 or more separate violations of section
2 801(2), which violations occurred on different occasions within a
3 24-month period unless such violations for the sale, furnishing,
4 or giving alcoholic liquor to a minor were discovered by the
5 licensee and disclosed to an appropriate law enforcement agency
6 immediately upon discovery.

7 (2) The commission shall provide a procedure by which a
8 licensee who is aggrieved by any penalty imposed under subsection
9 (1) and any suspension or revocation of a license ordered by the
10 commission, a commissioner, or a duly authorized agent of the
11 commission may request a hearing for the purpose of presenting
12 any facts or reasons to the commission as to why the penalty,
13 suspension, or revocation should be modified or rescinded. ~~Any~~
14 ~~such~~ **The** request shall be in writing and accompanied by a fee of
15 \$25.00. The commission, after reviewing the record made before a
16 commissioner or a duly authorized agent of the commission, may
17 allow or ~~refuse to allow~~ **deny** the hearing in accordance with
18 the commission's rules. The right to a hearing provided in this
19 subsection, however, shall not be interpreted by any court as
20 curtailing, removing, or annulling the right of the commission to
21 suspend or revoke licenses as provided for in this act. A
22 licensee does not have a right of appeal from the final
23 determination of the commission, except by leave of the circuit
24 court. Notice of the order of suspension or revocation of a
25 license or of the assessment of a penalty, or both, shall be
26 given in the manner prescribed by the commission. The suspension
27 or revocation of a license or the assessment of a penalty, or

1 both, by the commission or a duly authorized agent of the
2 commission does not prohibit the institution of a criminal
3 prosecution for a violation of this act. The institution of a
4 criminal prosecution for a violation of this act or the acquittal
5 or conviction of a person for a violation of this act does not
6 prevent the suspension or revocation of a license or the
7 assessment of a penalty, or both, by the commission. In a
8 hearing for the suspension or revocation of a license issued
9 under this act, proof that the defendant licensee or an agent or
10 employee of the licensee demanded and was shown, before
11 furnishing any alcoholic liquor to a minor, a motor vehicle
12 operator or chauffeur license or a registration certificate
13 issued by the federal selective service, or other bona fide
14 documentary evidence of majority and identity of the person, may
15 be offered as evidence in a defense to ~~a proceeding for the~~
16 ~~suspension or revocation of a license issued under this act~~ **the**
17 **complaint**. A licensee who has reason to believe that a minor has
18 used fraudulent identification to purchase alcoholic liquor in
19 violation of section 703 shall file a police report concerning
20 the violation with a local law enforcement agency and shall also
21 present the alleged fraudulent identification to the local law
22 enforcement agency at the time of filing the report if the
23 identification is in the possession of the licensee. The
24 commission may promulgate rules pursuant to the administrative
25 procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328,
26 regarding the utilization by licensees of equipment designed to
27 detect altered or forged driver licenses, state identification

1 cards, and other forms of identification.

2 (3) In addition to the hearing commissioners provided for in
3 section 209, the chairperson of the commission may designate not
4 more than 2 duly authorized agents to hear violation cases. A
5 person appointed under this subsection shall be a member in good
6 standing of the state bar of Michigan.

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

12 (5) A duly authorized agent who has been designated by the
13 chairperson pursuant to subsection (3) ~~shall be~~ **is** ineligible
14 for appointment to the commission for a period of 1 year after
15 the person ceases to serve as a duly authorized agent.