

HOUSE BILL No. 6395

September 5, 2006, Introduced by Reps. Jones, Elsenheimer, Booher, Green, LaJoy, Ball, Caul, Nofs, Stewart, Bieda, Mayes, Pearce, Condino, Espinoza, Clemente, Steil, Garfield, Vander Veen, Stahl, Brandenburg, Hansen, Kahn, Polidori, Taub, Farhat, Mortimer, Caswell, Gleason, Pastor, Sak, Nitz, Marleau, Emmons, Baxter and Sheltroun and referred to the Committee on Regulatory Reform.

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

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

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

17 (2) A person who is not a retail licensee or the retail
18 licensee's clerk, agent, or employee and who violates subsection
19 (1) is guilty of a felony, punishable by imprisonment for not more
20 than 10 years or a fine of not more than \$5,000.00, or both, if the
21 subsequent consumption of the alcoholic liquor by the minor is a
22 direct and substantial cause of that person's death or an
23 accidental injury that causes that person's death.

24 (3) If a violation occurs in an establishment that is licensed
25 by the commission for consumption of alcoholic liquor on the
26 licensed premises, a person who is a licensee or the clerk, agent,
27 or employee of a licensee shall not be charged with a violation of

1 subsection (1) or section 801(2) unless the licensee or the clerk,
2 agent, or employee of the licensee knew or should have reasonably
3 known with the exercise of due diligence that a person less than 21
4 years of age possessed or consumed alcoholic liquor on the licensed
5 premises and the licensee or clerk, agent, or employee of the
6 licensee failed to take immediate corrective action.

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

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

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

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

21 (5) If the enforcing agency is the commission and an
22 appearance ticket or civil infraction citation has not been issued,
23 then the commission shall recommend to a local law enforcement
24 agency that enforcement action be taken against a violator of this
25 section or section 703 who is not a licensee. However, subsection
26 (4) does not apply if the minor against whom enforcement action is
27 taken under section 703, the clerk, agent, or employee of the

1 licensee who directly sold or furnished alcoholic liquor to the
2 minor, or the person 21 years of age or older who sold or furnished
3 alcoholic liquor to the minor is not alive or is not present in
4 this state at the time the licensee is charged. Subsection (4)(a)
5 does not apply under either of the following circumstances:

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

11 (b) The violation of subsection (1) is the result of an
12 undercover operation in which the minor purchased or received
13 alcoholic liquor under the direction of the state police, the
14 commission, or a local police agency as part of an enforcement
15 action.

16 (6) Any initial or contemporaneous purchase or receipt of
17 alcoholic liquor by the minor under subsection (5)(a) or (b) must
18 have been under the direction of the state police, the commission,
19 or the local police agency and must have been part of the
20 undercover operation.

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

26 (8) In an action for the violation of this section, proof that
27 the defendant or the defendant's agent or employee demanded and was

1 shown, before furnishing alcoholic liquor to a minor, a motor
2 vehicle operator's or chauffeur's license, ~~or~~ a registration
3 certificate issued by the federal selective service, **A MILITARY**
4 **IDENTIFICATION CARD**, or other bona fide documentary evidence of the
5 age and identity of that person, shall be a defense to an action
6 brought under this section.

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

13 (a) Decoy operations.

14 (b) Off-premises violations.

15 (c) On-premises violations.

16 (d) Repeat offenses within the 3 years preceding the date of
17 that report.

18 (10) As used in this section:

19 (a) "Corrective action" means action taken by a licensee or a
20 clerk, agent, or employee of a licensee designed to prevent a minor
21 from further possessing or consuming alcoholic liquor on the
22 licensed premises. Corrective action includes, but is not limited
23 to, contacting a law enforcement agency and ejecting the minor and
24 any other person suspected of aiding and abetting the minor.

25 (b) "Diligent inquiry" means a diligent good faith effort to
26 determine the age of a person, which includes at least an
27 examination of an official Michigan operator's or chauffeur's

1 license, an official Michigan personal identification card, **A**
2 **REGISTRATION CERTIFICATE ISSUED BY THE FEDERAL SELECTIVE SERVICE, A**
3 **MILITARY IDENTIFICATION CARD,** or any other bona fide picture
4 identification which establishes the identity and age of the
5 person.