

HOUSE BILL No. 5198

July 14, 2009, Introduced by Reps. Haugh, Roberts, Kandrevas, Slezak, Liss, Scripps, Switalski, Barnett, Miller, Rick Jones and Dean and referred to the Committee on Transportation.

A bill to amend 1998 PA 58, entitled
"Michigan liquor control code of 1998,"
by amending section 701 (MCL 436.1701), as amended by 2006 PA 682.

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. **THE**
13 **SECRETARY OF STATE MAY SUSPEND THE OPERATOR'S OR CHAUFFEUR'S**
14 **LICENSE OF AN INDIVIDUAL CONVICTED OF VIOLATING THIS SUBSECTION AS**
15 **PROVIDED IN SECTION 319 OF THE MICHIGAN VEHICLE CODE, 1949 PA 300,**
16 **MCL 257.319.** A suitable sign describing the content of this section
17 and the penalties for its violation shall be posted in a
18 conspicuous place in each room where alcoholic liquor is sold. The
19 signs shall be approved and furnished by the commission.

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

27 (3) If a violation occurs in an establishment that is licensed

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

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

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

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

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

24 (5) If the enforcing agency is the commission and an
25 appearance ticket or civil infraction citation has not been issued,
26 then the commission shall recommend to a local law enforcement
27 agency that enforcement action be taken against a violator of this

1 section or section 703 who is not a licensee. However, subsection
2 (4) does not apply if the minor against whom enforcement action is
3 taken under section 703, the clerk, agent, or employee of the
4 licensee who directly sold or furnished alcoholic liquor to the
5 minor, or the person 21 years of age or older who sold or furnished
6 alcoholic liquor to the minor is not alive or is not present in
7 this state at the time the licensee is charged. Subsection (4)(a)
8 does not apply under either of the following circumstances:

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

14 (b) 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 state police, the
17 commission, or a local police agency as part of an enforcement
18 action.

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

24 (7) If a minor participates in an undercover operation in
25 which the minor is to purchase or receive alcoholic liquor under
26 the supervision of a law enforcement agency, his or her parents or
27 legal guardian shall consent to the participation if that person is

1 less than 18 years of age.

2 (8) In an action for the violation of this section, proof that
3 the defendant or the defendant's agent or employee demanded and was
4 shown, before furnishing alcoholic liquor to a minor, a motor
5 vehicle operator's or chauffeur's license, a military
6 identification card, or other bona fide documentary evidence of the
7 age and identity of that person, shall be a defense to an action
8 brought under this section.

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

15 (a) Decoy operations.

16 (b) Off-premises violations.

17 (c) On-premises violations.

18 (d) Repeat offenses within the 3 years preceding the date of
19 that report.

20 (10) As used in this section:

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

27 (b) "Diligent inquiry" means a diligent good faith effort to

1 determine the age of a person, which includes at least an
2 examination of an official Michigan operator's or chauffeur's
3 license, an official Michigan personal identification card, a
4 military identification card, or any other bona fide picture
5 identification which establishes the identity and age of the
6 person.

7 Enacting section 1. This amendatory act does not take effect
8 unless Senate Bill No.____ or House Bill No. 5199(request no.
9 03288'09 a) of the 95th Legislature is enacted into law.