

SENATE BILL No. 441

June 7, 2017, Introduced by Senator HANSEN 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 2010 PA 266.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

~~violation is the result of an undercover operation in which the~~
~~minor received alcoholic liquor under the direction of the state~~
~~police, the commission, or a local police agency as part of an~~
~~enforcement action, the retail licensee's clerk, agent, or employee~~
~~is responsible for a state civil infraction and may be ordered to~~
~~pay a civil fine of not more than \$100.00.~~ Except as otherwise
provided in subsection (2), a person who is not a retail licensee
or a retail licensee's clerk, agent, or employee and who violates
this subsection is guilty of a misdemeanor punishable by a fine of
not more than \$1,000.00 and imprisonment for not more than 60 days
for a first offense, a fine of not more than \$2,500.00 and
imprisonment for not more than 90 days for a second or subsequent
offense, and may be ordered to perform community service. For a
second or subsequent offense, the secretary of state shall suspend
the operator's or chauffeur's license of an individual who is not a
retail licensee or retail licensee's clerk, agent, or employee and
who is convicted of violating this subsection as provided in
section 319 of the Michigan vehicle code, 1949 PA 300, MCL 257.319.
A suitable sign describing the content of this section and the
penalties for its violation ~~shall~~ **MUST** be posted in a conspicuous
place in each room where alcoholic liquor is sold. The ~~signs shall~~
~~be approved and furnished by the commission.~~ **COMMISSION SHALL**
APPROVE AND FURNISH A SIGN UNDER THIS SECTION.

(2) A person who is not a retail licensee or the retail
licensee's clerk, agent, or employee and who violates subsection
(1) is guilty of a felony, punishable by imprisonment for not more
than 10 years or a fine of not more than \$5,000.00, or both, if the

1 subsequent consumption of the alcoholic liquor by the minor is a
2 direct and substantial cause of ~~that person's~~ **THE MINOR'S** death or
3 an accidental injury that causes ~~that person's~~ **THE MINOR'S** death.

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

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

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

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

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

1 (5) If the enforcing agency is the commission and an
2 appearance ticket ~~or civil infraction citation~~ has not been issued,
3 ~~then~~ the commission shall recommend to a local law enforcement
4 agency that enforcement action be taken against a violator of this
5 section or section 703 who is not a licensee. However, subsection
6 (4) does not apply if the minor against whom enforcement action is
7 taken under section 703, the clerk, agent, or employee of the
8 licensee who directly sold or furnished alcoholic liquor to the
9 minor, or 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. Subsection (4)(a)
12 does not apply under either of the following circumstances:

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

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

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

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

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

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

19 (a) Decoy operations.

20 (b) Off-premises violations.

21 (c) On-premises violations.

22 (d) Repeat offenses within the 3 years preceding the date of
23 that report.

24 (10) As used in this section:

25 (a) "Corrective action" means action taken by a licensee or a
26 clerk, agent, or employee of a licensee designed to prevent a minor
27 from further possessing or consuming alcoholic liquor on the

1 licensed premises. Corrective action includes, but is not limited
2 to, contacting a law enforcement agency and ejecting the minor and
3 any other person suspected of aiding and abetting the minor.

4 (b) "Diligent inquiry" means a diligent ~~good faith~~ **GOOD-FAITH**
5 effort to determine the age of ~~a person,~~ **AN INDIVIDUAL**, which
6 includes at least an examination of an official Michigan operator's
7 or chauffeur's license, an official Michigan personal
8 identification card, a military identification card, or any other
9 bona fide picture identification ~~which~~ **THAT** establishes the
10 identity and age of the ~~person.~~ **INDIVIDUAL.**

11 Enacting section 1. This amendatory act takes effect 90 days
12 after the date it is enacted into law.