

# SENATE BILL NO. 543

October 08, 2019, Introduced by Senators VANDERWALL and NESBITT 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

1 as to whether the ~~person~~**individual** is a minor, is guilty of a  
2 misdemeanor. A ~~retail licensee~~**retailer** or a ~~retail licensee's~~  
3 **retailer's** clerk, agent, or employee who violates this subsection  
4 shall ~~must~~ be punished in the manner provided for licensees in  
5 section 909 except that if the violation is the result of an  
6 undercover operation in which the minor received alcoholic liquor  
7 under the direction of the state police, the commission, or a local  
8 police agency as part of an enforcement action, the ~~retail~~  
9 ~~licensee's~~**retailer's** clerk, agent, or employee is responsible for  
10 a state civil infraction and may be ordered to pay a civil fine of  
11 not more than \$100.00. Except as otherwise provided in subsection  
12 (2), a ~~person~~**an individual** who is not a ~~retail licensee~~**retailer**  
13 or a ~~retail licensee's~~**retailer's** clerk, agent, or employee and who  
14 violates this subsection is guilty of a misdemeanor punishable by a  
15 fine of not more than \$1,000.00 and imprisonment for not more than  
16 60 days for a first offense, a fine of not more than \$2,500.00 and  
17 imprisonment for not more than 90 days for a second or subsequent  
18 offense, and may be ordered to perform community service. For a  
19 second or subsequent offense, the secretary of state shall suspend  
20 the operator's or chauffeur's license of an individual who is not a  
21 ~~retail licensee~~**retailer** or ~~retail licensee's~~**retailer's** clerk,  
22 agent, or employee and who is convicted of violating this  
23 subsection as provided in section 319 of the Michigan vehicle code,  
24 1949 PA 300, MCL 257.319. A suitable sign describing the content of  
25 this section and the penalties for its violation shall ~~must~~ be  
26 posted in a conspicuous place in each room where alcoholic liquor  
27 is sold. The **commission shall approve and furnish the** signs. shall  
28 ~~be approved and furnished by the commission.~~

29 (2) ~~A person~~**An individual** who is not a ~~retail licensee~~

1 **retailer** or the ~~retail licensee's~~ **retailer's** clerk, agent, or  
 2 employee and who violates subsection (1) is guilty of a felony,  
 3 punishable by imprisonment for not more than 10 years or a fine of  
 4 not more than \$5,000.00, or both, if the subsequent consumption of  
 5 the alcoholic liquor by the minor is a direct and substantial cause  
 6 of that ~~person's~~ **minor's** death or an accidental injury that causes  
 7 that ~~person's~~ **minor's** death.

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

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

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

26 (b) Enforcement action is taken under this section against the  
 27 ~~person~~ **individual** 21 years of age or older who is not the ~~retail~~  
 28 ~~licensee~~ **retailer** or the ~~retail licensee's~~ **retailer's** clerk, agent,  
 29 or employee who sold or furnished the alcoholic liquor to the

1 minor.

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

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

16 Subsection (4) (a) does not apply under either of the following  
17 circumstances:

18 (a) 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 ~~person's~~**individual's**  
21 employer and with the prior approval of the local prosecutor's  
22 office as part of an employer-sponsored internal enforcement  
23 action.

24 (b) The violation of subsection (1) is the result of an  
25 undercover operation in which the minor purchased or received  
26 alcoholic liquor under the direction of the state police, the  
27 commission, or a local police agency as part of an enforcement  
28 action.

29 (6) Any initial or contemporaneous purchase or receipt of

1 alcoholic liquor by the minor under subsection (5) (a) or (b) must  
2 have been under the direction of the state police, the commission,  
3 or the local police agency and must have been part of the  
4 undercover operation.

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

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

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

23 (a) Decoy operations.  
24 (b) Off-premises violations.  
25 (c) On-premises violations.  
26 (d) Repeat offenses within the 3 years preceding the date of  
27 ~~that~~**the** report.

28 (10) As used in this section:

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

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

6 (b) "Diligent inquiry" means a diligent good faith effort to  
7 determine the age of ~~a person,~~ **an individual**, which includes at  
8 least ~~an~~ **1 of the following:**

9 (i) **An** examination of an official Michigan operator's or  
10 chauffeur's license, an official Michigan personal identification  
11 card, a military identification card, or any other bona fide  
12 picture identification ~~which~~ **that** establishes the identity and age  
13 of the ~~person.~~ **individual.**

14 (ii) **Use of a secure identity verification device if all of the**  
15 **following conditions are met:**

16 (A) **The electronic scan of a biometric of the individual is**  
17 **referenced against any form of picture identification described in**  
18 **subparagraph (i).**

19 (B) **The authenticity of the picture identification was**  
20 **previously verified by an electronic authentication process.**

21 (C) **The identity of the individual was previously verified**  
22 **through a commercially available knowledge-based electronic**  
23 **authentication process.**

24 (D) **The authenticated picture identification was securely**  
25 **linked to biometrics contemporaneously collected from the**  
26 **individual.**

27 (c) **"Secure identity verification device" means a commercial**  
28 **device that instantly verifies the identity and age of an**  
29 **individual by an electronic scan of a biometric of the individual.**