

Act No. 122  
Public Acts of 1995  
Approved by the Governor  
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**STATE OF MICHIGAN**  
**88TH LEGISLATURE**  
**REGULAR SESSION OF 1995**

**Introduced by Rep. McBryde**

**Reps. Anthony, Bodem, Bush, Dalman, DeMars, Dolan, Gagliardi, Geiger, Gernaat, Gnodtke, Goschka, Green, Hill, Horton, Jaye, Jersevic, Johnson, Kaza, Kukuk, Law, Llewellyn, London, Lowe, McNutt, Middaugh, Middleton, Olshove, Owen, Oxender, Perricone, Pitoniak, Porreca, Randall, Voorhees and Weeks named co-sponsors**

# **ENROLLED HOUSE BILL No. 4136**

AN ACT to amend sections 33, 33b, and 33c of Act No. 8 of the Public Acts of the Extra Session of 1933, entitled as amended "An act to create a liquor control commission for the control of the alcoholic beverage traffic within the state of Michigan, and to prescribe its powers, duties and limitations; to provide for the control of the alcoholic liquor traffic within the state of Michigan and the establishment of state liquor stores; to provide for the care and treatment of alcoholics; to provide for the incorporation of farmer cooperative wineries and the granting of certain rights and privileges thereto; to provide for the licensing and taxation thereof, and the disposition of the moneys received under this act; to prescribe liability for retail licensees under certain circumstances; to require security for that liability; to provide procedures, defenses, and remedies regarding violations of this act; to provide for the enforcement and to prescribe penalties for violations of this act; to provide for the confiscation and disposition of property seized under the provisions of this act; to provide a referendum in certain cases; to repeal certain acts and parts of acts; and to repeal certain parts of this act on a specific date," section 33b as amended by Act No. 176 of the Public Acts of 1986 and section 33c as amended by Act No. 12 of the Public Acts of 1983, being sections 436.33, 436.33b, and 436.33c of the Michigan Compiled Laws; and to add section 20a.

*The People of the State of Michigan enact:*

Section 1. Sections 33, 33b, and 33c of Act No. 8 of the Public Acts of the Extra Session of 1933, section 33b as amended by Act No. 176 of the Public Acts of 1986 and section 33c as amended by Act No. 12 of the Public Acts of 1983, being sections 436.33, 436.33b, and 436.33c of the Michigan Compiled Laws, are amended and section 20a is added to read as follows:

Sec. 20a. (1) Notwithstanding section 20(1), if a retail licensee or a retail licensee's clerk, agent, or employee violates this act by selling or furnishing alcoholic liquor to a person less than 21 years of age, or by allowing a person less than 21 years of age to consume alcoholic liquor or possess alcoholic liquor for personal consumption on the licensed premises, and if the enforcing agency involved in the prosecution of the violation is the state police or a local police agency, the commission shall not take any action under section 20(1) to suspend or revoke the licensee's license or assess a penalty against the licensee unless enforcement action is taken against the person less than 21 years of age who purchased, consumed, or received the alcoholic liquor from the retail licensee or the retail licensee's clerk, agent, or employee and, if applicable, enforcement action is taken under this section against the person 21 years of age or older who sold or furnished the alcoholic liquor to the person who is less than 21 years of age.

(2) Subsection (1) does not apply under either of the following circumstances:

(a) The enforcing agent involved in the prosecution is a commission inspector rather than a police agency.

(b) The prosecution of the violation is the result of an undercover operation in which the person less than 21 years of age who purchased, consumed, or received the alcoholic liquor acted under the direction of the state police or a local police agency as part of the enforcement action and such enforcement action is otherwise in compliance with section 33(4).

Sec. 33. (1) Alcoholic liquor shall not be sold or furnished to a person unless the person has attained 21 years of age. Except as otherwise provided in subsection (2) and subject to subsection (4), a person who knowingly sells or furnishes alcoholic liquor to a person who is less than 21 years of age, or who fails to make diligent inquiry as to whether the person is less than 21 years of age, is guilty of a misdemeanor. A retail licensee or a retail licensee's clerk, agent, or employee who violates this subsection shall be punished in the manner provided for licensees in section 50. Notwithstanding section 50 and 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 shall be fined \$1,000.00 and may be sentenced to imprisonment for up to 60 days for a first offense, shall be fined \$2,500.00 and shall be sentenced to imprisonment for up to 90 days for a second or subsequent offense, and may be ordered to perform community service. A suitable sign describing the content of this section and the penalties for its violation shall be posted in a conspicuous place in each room where alcoholic liquor is sold. The signs shall be approved and furnished by the commission.

(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 subsequent consumption of the alcoholic liquor by the person less than 21 years of age is a direct and substantial cause of that person's death or an accidental injury that causes that person's death.

(3) If a violation occurs in an establishment that is licensed by the commission for consumption of alcoholic liquor on the licensed premises, a person who is a licensee or the clerk, agent, or employee of a licensee shall not be charged with a violation of subsection (1) or section 22(3) unless the licensee or the clerk, agent, or employee of the licensee knew or should have reasonably known with the exercise of due diligence that a person less than 21 years of age possessed or consumed alcoholic liquor on the licensed premises and the licensee or clerk, agent, or employee of the licensee failed to take immediate corrective action.

(4) If the enforcing agency involved in the violation is the state police or a local police agency, a licensee shall not be charged with a violation of subsection (1) or section 22(3) unless enforcement action under section 33b is taken against the person less than 21 years of age who purchased or attempted to purchase, consumed or attempted to consume, or possessed or attempted to possess alcoholic liquor and, if applicable, enforcement action is taken under this section against the person 21 years of age or older who sold or furnished the alcoholic liquor to the person who is less than 21 years of age. If the enforcing agency is the commission, then the commission shall recommend to a local law enforcement agency that enforcement action be taken against a violator of this section or section 33b who is not a licensee. However, this subsection does not apply under any of the following circumstances:

(a) The person against whom enforcement action is taken under section 33b or the person 21 years of age or older who sold or furnished alcoholic liquor to the person less than 21 years of age is not alive or is not present in this state at the time the licensee is charged.

(b) The violation of subsection (1) is the result of an undercover operation in which the person less than 21 years of age purchased or received alcoholic liquor under the direction of the person's employer and with the prior approval of the local prosecutor's office as part of an employer-sponsored internal enforcement action.

(c) The violation of subsection (1) is the result of an undercover operation in which the person less than 21 years of age purchased or received alcoholic liquor under the direction of the state police, the commission, or a local police agency as part of an enforcement action. However, any initial or contemporaneous purchase or receipt of alcoholic liquor by the person less than 21 years of age shall have been under the direction of the state police, the commission, or the local police agency and shall have been part of the undercover operation.

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

(6) In an action for the violation of this section, proof that the defendant or the defendant's agent or employee demanded and was shown, before furnishing alcoholic liquor to a person less than 21 years of age, a motor vehicle operator's or chauffeur's license or a registration certificate issued by the federal selective service, or other bona fide documentary evidence of the age and identity of that person, shall be a defense to an action brought under this section.

(7) The commission shall provide, on an annual basis, a written report to the department of state police as to the number of actions heard by the commission involving violations of this section and section 22(3). The report shall include the disposition of each action and contain figures representing the following categories:

- (a) Decoy operations.
- (b) Off-premises violations.
- (c) On-premises violations.

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

(8) As used in this section:

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

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

Sec. 33b. (1) A person less than 21 years of age shall not purchase or attempt to purchase alcoholic liquor, consume or attempt to consume alcoholic liquor, or possess or attempt to possess alcoholic liquor, except as provided in this section and section 33a(1). Notwithstanding section 50, a person less than 21 years of age who violates this subsection is guilty of a misdemeanor punishable by the following fines and sanctions, and is not subject to the penalties prescribed in section 50:

(a) For the first violation a fine of not more than \$100.00 and may be ordered to perform community service and to undergo substance abuse screening and assessment at his or her own expense as described in subsection (4).

(b) For a second violation a fine of not more than \$200.00, and may be ordered to participate in substance abuse prevention or substance abuse treatment and rehabilitation services as defined in section 6107 of the public health code, Act No. 368 of the Public Acts of 1978, being section 333.6107 of the Michigan Compiled Laws, and designated by the administrator of substance abuse services, to perform community service, and to undergo substance abuse screening and assessment at his or her own expense as described in subsection (4). The person is also subject to sanctions against his or her operator's or chauffeur's license imposed in subsection (5).

(c) For a third or subsequent violation a fine of not more than \$500.00, and may be ordered to participate in substance abuse prevention or substance abuse treatment and rehabilitation services as defined in section 6107 of Act No. 368 of the Public Acts of 1978, and designated by the administrator of substance abuse services, to perform community service, and to undergo substance abuse screening and assessment at his or her own expense as described in subsection (4). The person is also subject to sanctions against his or her operator's or chauffeur's license imposed in subsection (5).

(2) Fifty percent of the fines collected under subsection (1) shall be deposited with the state treasurer for deposit in the general fund to the credit of the department of public health for substance abuse prevention, treatment, and rehabilitation services.

(3) A person who furnishes fraudulent identification to a person less than 21 years of age, or notwithstanding subsection (1) a person less than 21 years of age who uses fraudulent identification to purchase alcoholic liquor, is guilty of a misdemeanor. The court shall order the secretary of state to suspend, pursuant to section 319(5) of Act No. 300 of the Public Acts of 1949, being section 257.319 of the Michigan Compiled Laws, for a period of 90 days, the operator or chauffeur license of a person who is convicted of furnishing or using fraudulent identification in violation of this subsection and the operator or chauffeur license of that person shall be surrendered to the court. The court shall immediately forward the surrendered license and an abstract of conviction to the secretary of state. A suspension ordered under this subsection shall be in addition to any other suspension of the person's operator or chauffeur license.

(4) The court may order the person found violating subsection (1) to undergo screening and assessment by a person or agency as designated by the substance abuse coordinating agency as defined in section 6103 of Act No. 368 of the Public Acts of 1978, being section 333.6103 of the Michigan Compiled Laws, in order to determine whether the person is likely to benefit from rehabilitative services, including alcohol or drug education and alcohol or drug treatment programs.

(5) Immediately upon the entry of a conviction or a probate court disposition for a violation of subsection (1), the court shall consider all prior convictions or probate court dispositions of subsection (1), or a local ordinance or law of another state substantially corresponding to subsection (1), and shall impose the following sanctions:

(a) If the court finds that the person has 1 such prior conviction or probate court disposition, the court shall order the secretary of state to suspend the operator's or chauffeur's license of the person for a period of not less than 90 days or more than 180 days. The court may order the secretary of state to issue to the person a restricted license after the first 30 days of the period of suspension in the manner described in subsection (6) and provided for in section 319 of Act No. 300 of the Public Acts of 1949, being section 257.319 of the Michigan Compiled Laws. In the case of a person who does not possess an operator's or chauffeur's license, the secretary of state shall deny the application for an operator's or chauffeur's license for the applicable suspension period.

(b) If the court finds that the person has 2 or more such prior convictions or probate court dispositions, the court shall order the secretary of state to suspend the operator's or chauffeur's license of the person for a period of not less than 180 days or more than 1 year. The court may order the secretary of state to issue to the person a restricted license

after the first 60 days of the period of suspension in the manner described in subsection (6) and provided for in section 319 of Act No. 300 of the Public Acts of 1949, being section 257.319 of the Michigan Compiled Laws. In the case of a person who does not possess an operator's or chauffeur's license, the secretary of state shall deny the application for an operator's or chauffeur's license for the applicable suspension period.

(6) In those cases in which a restricted license is allowed under this section, the court shall not order the secretary of state to issue a restricted license unless the person states under oath, and the court finds based upon the record in open court, that the person is unable to take public transportation to and from his or her work location, place of alcohol or drug education treatment, probation department, court-ordered community service program, or educational institution, and does not have any family members or others able to provide transportation. The court order under subsection (5) and the restricted license shall indicate the work location of the person to whom it is issued, the approved route or routes and permitted times of travel, and shall permit the person to whom it is issued only to do 1 or more of the following:

(a) Drive to and from the person's residence and work location.

(b) Drive in the course of the person's employment or occupation.

(c) Drive to and from the person's residence and an alcohol or drug education or treatment program as ordered by the court.

(d) Drive to and from the person's residence and the court probation department, or a court-ordered community service program, or both.

(e) Drive to and from the person's residence and an educational institution at which the person is enrolled as a student.

(7) If license sanctions are imposed, immediately upon the entry of a court-ordered sanction pursuant to subsection (5), the court shall order the person convicted for the violation to surrender to the court his or her operator's or chauffeur's license. The court shall immediately forward a notice of court-ordered license sanctions to the secretary of state. If the license is not forwarded to the secretary of state, an explanation of the reason why the license is absent shall be attached. If the finding is reviewed by the circuit court, the court may, ex parte, order the secretary of state to rescind the suspension or restricted license issued pursuant to this section. Immediately following imposition of the sanction, the court shall forward a notice to the secretary of state indicating the sanction imposed.

(8) A peace officer who has reasonable cause to believe a person less than 21 years of age has consumed alcoholic liquor may require the person to submit to a preliminary chemical breath analysis. A legal presumption shall be made by the court that the person less than 21 years of age has consumed or possessed alcoholic liquor if a preliminary chemical breath analysis or other acceptable blood alcohol test indicates the person's blood contained .02% or more by weight of alcohol. A person less than 21 years of age who refuses to submit to a preliminary chemical breath test analysis as required in this subsection is responsible for a state civil infraction.

(9) A law enforcement agency, upon determining that a person less than 18 years of age who is not emancipated pursuant to Act No. 293 of the Public Acts of 1968, being sections 772.1 to 772.6 of the Michigan Compiled Laws, allegedly consumed, possessed, purchased, or attempted to consume, possess, or purchase alcoholic liquor in violation of subsection (1) shall notify the parent or parents, custodian, or guardian of the person as to the nature of the violation if the name of a parent, guardian, or custodian is reasonably ascertainable by the law enforcement agency. The notice required by this subsection shall be made not later than 48 hours after the law enforcement agency determines that the person who allegedly violated subsection (1) is less than 18 years of age and not emancipated pursuant to Act No. 293 of the Public Acts of 1968. The notice may be made by any means reasonably calculated to give prompt actual notice including, but not limited to, notice in person, by telephone, or by first-class mail. If a person less than 17 years of age is incarcerated for violating subsection (1), then his or her parents or legal guardian shall be notified immediately as provided in this subsection.

(10) This section does not prohibit a person less than 21 years of age from possessing alcoholic liquor during regular working hours and in the course of his or her employment if employed by a person licensed by this act, by the commission, or by an agent of the commission, if the alcoholic liquor is not possessed for his or her personal consumption.

(11) This section shall not be construed to limit the civil or criminal liability of the vendor or the vendor's clerk, servant, agent, or employee for a violation of this act.

(12) The consumption of alcoholic liquor by a person less than 21 years of age who is enrolled in a course offered by an accredited post secondary educational institution in an academic building of the institution under the supervision of a faculty member is not prohibited by this act if the purpose of the consumption is solely educational and is a necessary ingredient of the course.

(13) The consumption by a person less than 21 years of age of sacramental wine in connection with religious services at a church, synagogue, or temple is not prohibited by this act.

(14) Subsection (1) does not apply to a person less than 21 years of age who participates in either or both of the following:

(a) An undercover operation in which the person less than 21 years of age purchases or receives alcoholic liquor under the direction of the person's employer and with the prior approval of the local prosecutor's office as part of an employer-sponsored internal enforcement action.

(b) An undercover operation in which the person less than 21 years of age purchases or receives alcoholic liquor under the direction of the state police, the commission, or a local police agency as part of an enforcement action except that any initial or contemporaneous purchase or receipt of alcoholic liquor by the person less than 21 years of age is under the direction of the state police, the commission, or the local police agency and is part of the undercover operation. The state police, the commission, or a local police agency shall not recruit or attempt to recruit a person less than 21 years of age for participation in an undercover operation at the scene of a violation of subsection (1), section 22(3), or section 33(1).

(15) As used in this section:

(a) "Probate court disposition" means a probate court order of disposition for a child found to be within the provisions of chapter XIIIA of Act No. 288 of the Public Acts of 1939, being sections 712A.1 to 712A.31 of the Michigan Compiled Laws.

(b) "Work location" means, as applicable, either the specific place or places of employment, or the territory or territories regularly visited by the person in pursuance of the person's occupation, or both.

Sec. 33c. (1) A sheriff or deputy sheriff; village or township marshal; an officer or member of a village, township, or city police department; an officer of the department of state police; or an inspector of the commission who witnesses a violation of section 33b or a local ordinance corresponding to that section may stop and detain the person for purposes of obtaining satisfactory identification, seizing illegally possessed alcoholic liquor, and issuing an appearance ticket.

(2) As used in this section, "appearance ticket" means a complaint or written notice, issued and subscribed by a law enforcement officer of the type described in subsection (1) or inspector of the commission, directing a designated person to appear in a designated district, municipal, or probate court at a designated time in connection with the alleged violation. The appearance ticket shall consist of the following parts:

(a) The original which shall be a complaint or notice to appear by the officer and filed with the court.

(b) The first copy which shall be the abstract of court record.

(c) The second copy which shall be delivered to the alleged violator.

(d) The third copy which shall be retained by the law enforcement agency.

(3) The court may accept a plea of guilty by the defendant of the allegations of an appearance ticket and the court shall then impose a fine, license suspension, or other sanction as further authorized by section 33b. If the defendant denies the allegations of the appearance ticket, the court shall then set a date for trial or hearing.

Section 2. This amendatory act shall take effect September 1, 1995.

This act is ordered to take immediate effect.

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Clerk of the House of Representatives.

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Secretary of the Senate.

Approved -----

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Governor.