

Act No. 492
Public Acts of 1996
Approved by the Governor
December 23, 1996
Filed with the Secretary of State
December 30, 1996

**STATE OF MICHIGAN
88TH LEGISLATURE
REGULAR SESSION OF 1996**

Introduced by Reps. Crissman, Middleton, Law, Voorhees, Hill, Rhead, Kukuk, Kaza, Hammerstrom, Bryant, Bodem, London, Horton, Green, Dalman, Bullard, Dolan, Rocca, Goschka, Willard, Brewer, Kilpatrick, Munsell, Galloway, Gnodtke, Randall and Llewellyn

ENROLLED HOUSE BILL No. 5501

AN ACT to amend section 33b 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," as amended by Act No. 176 of the Public Acts of 1996, being section 436.33b of the Michigan Compiled Laws.

The People of the State of Michigan enact:

Section 1. Section 33b of Act No. 8 of the Public Acts of the Extra Session of 1933, as amended by Act No. 176 of the Public Acts of 1996, being section 436.33b of the Michigan Compiled Laws, is amended to read as follows:

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 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, 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 (3).

(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 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 (3). The person is also subject to sanctions against his or her operator's or chauffeur's license imposed in subsection (4).

(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 (3). The person is also subject to sanctions against his or her operator's or chauffeur's license imposed in subsection (4).

(2) 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.

(3) 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.

(4) 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 (5) 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 (5) 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.

(5) 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 (4) 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.

(6) If license sanctions are imposed, immediately upon the entry of a court-ordered sanction pursuant to subsection (4), 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 appealed to the circuit court, the court may, ex parte, order the secretary of state to stay the suspension issued pursuant to this section pending the outcome of the appeal. Immediately following imposition of the sanction, the court shall forward a notice to the secretary of state indicating the sanction imposed.

(7) 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 peace officer may arrest a person based in whole or in part upon the results of a preliminary chemical breath analysis. The results of a preliminary chemical breath analysis or other acceptable blood alcohol test are admissible in a criminal prosecution to determine whether the person less than 21 years of age has consumed or possessed alcoholic liquor. 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 and may be ordered to pay a civil fine of not more than \$100.00.

(8) 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 722.1 to 722.6 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), his or her parents or legal guardian shall be notified immediately as provided in this subsection.

(9) 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.

(10) 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.

(11) 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.

(12) 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.

(13) 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).

(14) As used in this section:

(a) "Probate court disposition" means an order of disposition of the probate court or the family division of the circuit court for a child found to be within the provisions of chapter XIIA of Act No. 288 of the Public Acts of 1939, being sections 712A.1 to 712A.32 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.

Section 2. This amendatory act shall take effect April 1, 1997.

Clerk of the House of Representatives.

Secretary of the Senate.

Approved -----

Governor.