

HOUSE BILL No. 4436

March 8, 2001, Introduced by Reps. Bogardus, Schermesser, Lipsey, Hale, Gielegthem, Jamnick, Dennis, Adamini, Jacobs, Callahan and Minore 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).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 701. (1) Alcoholic liquor shall not be sold or fur-
2 nished to a minor. Except as otherwise provided in
3 subsection (2) and subject to subsection (4), a person who know-
4 ingly sells or furnishes alcoholic liquor to a minor, or who
5 fails to make diligent inquiry as to whether the person is a
6 minor, is guilty of a misdemeanor. A retail licensee or a retail
7 licensee's clerk, agent, or employee who violates this subsection
8 shall be punished in the manner provided for licensees in
9 section 909. Notwithstanding section 909 and except as otherwise
10 provided in subsection (2), a person who is not a retail licensee
11 or a retail licensee's clerk, agent, or employee and who violates

1 this subsection shall be fined \$1,000.00 and may be sentenced to
2 imprisonment for up to 60 days for a first offense, shall be
3 fined \$2,500.00 and shall be sentenced to imprisonment for up to
4 90 days for a second or subsequent offense, and may be ordered to
5 perform community service. A suitable sign describing the con-
6 tent of this section and the penalties for its violation shall be
7 posted in a conspicuous place in each room where alcoholic liquor
8 is sold. The signs shall be approved and furnished by the
9 commission.

10 (2) A person who is not a retail licensee or the retail
11 licensee's clerk, agent, or employee and who violates
12 subsection (1) is guilty of a felony, punishable by imprisonment
13 for not more than 10 years, or a fine of not more than \$5,000.00,
14 or both, if the subsequent consumption of the alcoholic liquor by
15 the minor is a direct and substantial cause of ~~that~~ ANY
16 person's death or an accidental injury that causes ~~that~~ A
17 person's death.

18 (3) If a violation occurs in an establishment that is
19 licensed by the commission for consumption of alcoholic liquor on
20 the licensed premises, a person who is a licensee or the clerk,
21 agent, or employee of a licensee shall not be charged with a vio-
22 lation of subsection (1) or section 801(2) unless the licensee or
23 the clerk, agent, or employee of the licensee knew or should have
24 reasonably known with the exercise of due diligence that a
25 ~~person less than 21 years of age~~ MINOR possessed or consumed
26 alcoholic liquor on the licensed premises and the licensee or

1 clerk, agent, or employee of the licensee failed to take
2 immediate corrective action.

3 (4) If the enforcing agency involved in the violation is the
4 state police or a local police agency, a licensee shall not be
5 charged with a violation of subsection (1) or section 801(2)
6 unless enforcement action under section 703 is taken against the
7 minor who purchased or attempted to purchase, consumed or
8 attempted to consume, or possessed or attempted to possess alco-
9 holic liquor and, if applicable, enforcement action is taken
10 under this section against the person 21 years of age or older
11 who sold or furnished the alcoholic liquor to the minor. If the
12 enforcing agency is the commission, then the commission shall
13 recommend to a local law enforcement agency that enforcement
14 action be taken against a violator of this section or section 703
15 who is not a licensee. However, this subsection does not apply
16 under any of the following circumstances:

17 (a) The person against whom enforcement action is taken
18 under section 703 or the person 21 years of age or older who sold
19 or furnished alcoholic liquor to the minor is not alive or is not
20 present in this state at the time the licensee is charged.

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

26 (c) The violation of subsection (1) is the result of an
27 undercover operation in which the minor purchased or received

1 alcoholic liquor under the direction of the state police, the
2 commission, or a local police agency as part of an enforcement
3 action. However, any initial or contemporaneous purchase or
4 receipt of alcoholic liquor by the minor shall have been under
5 the direction of the state police, the commission, or the local
6 police agency and shall have been part of the undercover
7 operation.

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

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

21 (7) The commission shall provide, on an annual basis, a
22 written report to the department of state police as to the number
23 of actions heard by the commission involving violations of this
24 section and section 801(2). The report shall include the dispo-
25 sition of each action and contain figures representing the fol-
26 lowing categories:

1 (a) Decoy operations.

2 (b) Off-premises violations.

3 (c) On-premises violations.

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

6 (8) As used in this section:

7 (a) "Corrective action" means action taken by a licensee or
8 a clerk, agent, or employee of a licensee designed to prevent a
9 minor from further possessing or consuming alcoholic liquor on
10 the licensed premises. Corrective action includes, but is not
11 limited to, contacting a law enforcement agency and ejecting the
12 minor and any other person suspected of aiding and abetting the
13 minor.

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