

HOUSE BILL No. 4005

January 15, 2015, Introduced by Rep. Heise 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 903 (MCL 436.1903), as amended by 2010 PA 175.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 903. (1) The commission or any commissioner or duly
 2 authorized agent of the commission designated by the chairperson of
 3 the commission, ~~upon due~~ **ON** notice and proper hearing, may suspend
 4 or revoke any license ~~upon~~ **ON** a violation of this act or any of the
 5 rules promulgated by the commission under this act. ~~The~~ **EXCEPT AS**
 6 **OTHERWISE PROVIDED IN SUBSECTION (3), THE** commission or any
 7 commissioner or duly authorized agent of the commission designated
 8 by the chairperson of the commission, may assess a penalty of not
 9 **LESS THAN \$100.00 BUT NOT** more than ~~\$300.00~~ **\$750.00** for each

1 violation of this act or rules promulgated under this act, ~~or not~~
2 ~~more than \$1,000.00 for each violation of section 801(2), in~~
3 addition to or in lieu of revocation or suspension of the license,
4 which penalty ~~shall~~ **MUST** be paid to the commission and deposited
5 with the state treasurer and ~~shall~~ **MUST** be credited to the general
6 fund of the state. ~~The commission shall hold a hearing and order~~
7 ~~the suspension or revocation of a license if the licensee has been~~
8 ~~found liable for 3 or more separate violations of section 801(2)~~
9 ~~which violations occurred on different occasions within a 24 month~~
10 ~~period unless such violations for the sale, furnishing, or giving~~
11 ~~alcoholic liquor to a minor were discovered by the licensee and~~
12 ~~disclosed to an appropriate law enforcement agency immediately upon~~
13 ~~discovery.~~ A retail licensee who sells, offers to sell, accepts,
14 furnishes, possesses, or allows the consumption of spirits in
15 violation of section 901(6) is subject to an administrative fine of
16 not more than \$2,500.00 per occurrence and the following license
17 sanctions after notice and opportunity for an administrative
18 hearing under the administrative procedures act of 1969, 1969 PA
19 306, MCL 24.201 to 24.328:

20 (a) For a first violation, a license revocation or suspension
21 for between 1 and 30 days.

22 (b) For a second violation, a license revocation or suspension
23 for between 31 and 90 days.

24 (c) For a third or subsequent violation, revocation of the
25 license.

26 (2) The commission shall provide a procedure by which a
27 licensee who is aggrieved by any penalty imposed under subsection

1 (1), (3), OR (4) and any suspension or revocation of a license
2 ordered by the commission, a commissioner, or a duly authorized
3 agent of the commission may request a hearing for the purpose of
4 presenting any facts or reasons to the commission as to why the
5 penalty, suspension, or revocation should be modified or rescinded.
6 ~~Any such~~ **THE** request ~~shall~~ **MUST** be in writing and accompanied by a
7 fee of \$25.00. The commission, after reviewing the record made
8 before a commissioner or a duly authorized agent of the commission,
9 may allow or refuse to allow the hearing in accordance with the
10 commission's rules. The right to a hearing provided in this
11 subsection, however, ~~shall~~ **MAY** not be interpreted by ~~any~~ **A** court as
12 curtailing, removing, or annulling the right of the commission to
13 suspend or revoke licenses as provided for in this act. A licensee
14 does not have a right of appeal from the final determination of the
15 commission, except by leave of the circuit court. Notice of the
16 order of suspension or revocation of a license or of the assessment
17 of a penalty, or both, ~~shall~~ **MUST** be given in the manner prescribed
18 by the commission. The suspension or revocation of a license or the
19 assessment of a penalty, or both, by the commission or a duly
20 authorized agent of the commission does not prohibit the
21 institution of a criminal prosecution for a violation of this act.
22 The institution of a criminal prosecution for a violation of this
23 act or the acquittal or conviction of a person for a violation of
24 this act does not prevent the suspension or revocation of a license
25 or the assessment of a penalty, or both, by the commission. In a
26 hearing for the suspension or revocation of a license issued under
27 this act, proof that the defendant licensee or an agent or employee

1 of the licensee demanded and was shown, before furnishing any
2 alcoholic liquor to a minor, a motor vehicle operator or chauffeur
3 license or a registration certificate issued by the federal
4 selective service, or other bona fide documentary evidence of
5 majority and identity of the person, may be offered as evidence in
6 a defense to a proceeding for the suspension or revocation of a
7 license issued under this act. A licensee who has reason to believe
8 that a minor has used fraudulent identification to purchase
9 alcoholic liquor in violation of section 703 shall file a police
10 report concerning the violation with a local law enforcement agency
11 and shall also present the alleged fraudulent identification to the
12 local law enforcement agency at the time of filing the report if
13 the identification is in the possession of the licensee. The
14 commission may promulgate rules ~~pursuant to~~ **UNDER** the
15 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
16 24.328, regarding the utilization by licensees of equipment
17 designed to detect altered or forged driver licenses, state
18 identification cards, and other forms of identification.

19 **(3) THE COMMISSION OR ANY COMMISSIONER OR DULY AUTHORIZED**
20 **AGENT OF THE COMMISSION DESIGNATED BY THE CHAIRPERSON OF THE**
21 **COMMISSION MAY ASSESS A PENALTY AND LICENSE SANCTIONS FOR EACH**
22 **CRITICAL VIOLATION, ON NOTICE AND PROPER HEARING, AS FOLLOWS:**

23 **(A) FOR A FIRST VIOLATION, A FINE OF NOT LESS THAN \$1,000.00**
24 **BUT NOT MORE THAN \$2,000.00 OR A LICENSE REVOCATION OR SUSPENSION**
25 **FOR BETWEEN 1 AND 10 DAYS, OR BOTH.**

26 **(B) FOR A SECOND VIOLATION WITHIN A 24-MONTH PERIOD, A FINE OF**
27 **NOT LESS THAN \$2,000.00 BUT NOT MORE THAN \$3,000.00 OR A LICENSE**

1 REVOCATION OR SUSPENSION FOR BETWEEN 11 AND 20 DAYS, OR BOTH.

2 (C) FOR A THIRD VIOLATION WITHIN A 24-MONTH PERIOD, A FINE OF
3 NOT LESS THAN \$3,000.00 BUT NOT MORE THAN \$4,000.00 OR A LICENSE
4 REVOCATION OR SUSPENSION FOR BETWEEN 21 DAYS AND 30 DAYS, OR BOTH.

5 (D) FOR A FOURTH OR SUBSEQUENT VIOLATION WITHIN A 24-MONTH
6 PERIOD, A LICENSE REVOCATION OR SUSPENSION FOR 60 DAYS.

7 (4) THE COMMISSION SHALL HOLD A HEARING AND ORDER THE
8 SUSPENSION OR REVOCATION OF A LICENSE IF THE LICENSEE HAS BEEN
9 FOUND LIABLE FOR 3 OR MORE SEPARATE VIOLATIONS OF SECTION 801(2),
10 WHICH VIOLATIONS OCCURRED ON DIFFERENT OCCASIONS WITHIN A 24-MONTH
11 PERIOD, UNLESS SUCH VIOLATIONS FOR THE SALE, FURNISHING, OR GIVING
12 OF ALCOHOLIC LIQUOR TO A MINOR WERE DISCOVERED BY THE LICENSEE AND
13 DISCLOSED TO AN APPROPRIATE LAW ENFORCEMENT AGENCY IMMEDIATELY ON
14 DISCOVERY. A RETAIL LICENSEE WHO SELLS, FURNISHES, OR GIVES
15 ALCOHOLIC LIQUOR TO A MINOR WHO IS LESS THAN 17 YEARS OF AGE IN
16 VIOLATION OF SECTION 801(2) IS SUBJECT TO THE FOLLOWING PENALTIES
17 AND LICENSE SANCTIONS, ON NOTICE AND PROPER HEARING:

18 (A) FOR A FIRST VIOLATION, A FINE OF NOT LESS THAN \$2,000.00
19 BUT NOT MORE THAN \$3,000.00 OR A LICENSE REVOCATION OR SUSPENSION
20 FOR BETWEEN 1 AND 10 DAYS, OR BOTH.

21 (B) FOR A SECOND VIOLATION WITHIN A 24-MONTH PERIOD, A FINE OF
22 NOT LESS THAN \$3,000.00 BUT NOT MORE THAN \$4,000.00 OR A LICENSE
23 REVOCATION OR SUSPENSION FOR BETWEEN 11 AND 20 DAYS, OR BOTH.

24 (C) FOR A THIRD VIOLATION WITHIN A 24-MONTH PERIOD, A FINE OF
25 NOT LESS THAN \$4,000.00 BUT NOT MORE THAN \$5,000.00 OR A LICENSE
26 REVOCATION OR SUSPENSION FOR BETWEEN 21 DAYS AND 30 DAYS, OR BOTH.

27 (D) FOR A FOURTH OR SUBSEQUENT VIOLATION WITHIN A 24-MONTH

1 **PERIOD, A LICENSE REVOCATION OR SUSPENSION FOR 60 DAYS.**

2 (5) ~~(3)~~—In addition to the hearing commissioners provided for
3 in section 209, the chairperson of the commission may designate not
4 more than 2 duly authorized agents to hear violation cases. A
5 person appointed under this subsection ~~shall~~**MUST** be a member in
6 good standing of the state bar of Michigan.

7 (6) ~~(4)~~—A duly authorized agent who has been designated by the
8 chairperson ~~pursuant to~~**UNDER** subsection ~~(3)~~ ~~shall have,~~ (5) **HAS,**
9 in the hearing of violation cases, the same authority and
10 responsibility as does a hearing commissioner under this act and
11 the rules promulgated under this act.

12 (7) ~~(5)~~—A duly authorized agent who has been designated by the
13 chairperson ~~pursuant to~~**UNDER** subsection ~~(3)~~ ~~shall be~~ (5) **IS**
14 ineligible for appointment to the commission for a period of 1 year
15 after the person ceases to serve as a duly authorized agent.

16 (8) **IN ADDITION TO THE PENALTY AND LICENSING SANCTIONS**
17 **PROVIDED IN SUBSECTIONS (1), (3), AND (4), FOR ANY VIOLATION OF**
18 **THIS ACT OR RULES PROMULGATED UNDER THIS ACT THE COMMISSION MAY**
19 **ORDER THE LICENSEE TO REIMBURSE A LOCAL UNIT OF GOVERNMENT FOR ANY**
20 **EXPENSES OR COSTS THAT ARE ATTRIBUTABLE TO THAT VIOLATION. THE**
21 **AMOUNT ORDERED TO BE PAID UNDER THIS SUBSECTION MUST BE PAID TO THE**
22 **COMMISSION, WHO SHALL TRANSMIT THE APPROPRIATE AMOUNT TO THE**
23 **APPROPRIATE LOCAL UNIT OF GOVERNMENT.**

24 (9) **AS USED IN THIS SECTION, "CRITICAL VIOLATION" MEANS A**
25 **VIOLATION OF SECTION 203, 217(2), 801(2), 901(1), 916(1), (2), OR**
26 **(3), 1114(2), OR 1115(1) OR A VIOLATION OF R 436.1011(1), (2), OR**
27 **(4), R 436.1031(1), OR R 436.1527 OF THE MICHIGAN ADMINISTRATIVE**

1 CODE.