

SUBSTITUTE FOR
SENATE BILL NO. 543

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
6 as to whether the ~~person~~ **individual** is a minor, is guilty of a
7 misdemeanor. A retail licensee or a retail licensee's clerk, agent,
8 or employee who violates this subsection ~~shall~~ **must** be punished in
9 the manner provided for licensees in section 909 except that if the



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

25 (2) ~~A person~~**An individual** who is not a retail licensee or the
26 retail licensee's clerk, agent, or employee and who violates
27 subsection (1) is guilty of a felony, punishable by imprisonment
28 for not more than 10 years or a fine of not more than \$5,000.00, or
29 both, if the subsequent consumption of the alcoholic liquor by the



1 minor is a direct and substantial cause of that ~~person's~~**minor's**
 2 death or an accidental injury that causes that ~~person's~~**minor's**
 3 death.

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

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

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

22 (b) Enforcement action is taken under this section against the
 23 ~~person~~**individual** 21 years of age or older who is not the retail
 24 licensee or the retail licensee's clerk, agent, or employee who
 25 sold or furnished the alcoholic liquor to the minor.

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

29 (5) If the enforcing agency is the commission and an



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

13 (a) The violation of subsection (1) is the result of an
14 undercover operation in which the minor purchased or received
15 alcoholic liquor under the direction of the ~~person's~~**individual's**
16 employer and with the prior approval of the local prosecutor's
17 office as part of an employer-sponsored internal enforcement
18 action.

19 (b) The violation of subsection (1) is the result of an
20 undercover operation in which the minor purchased or received
21 alcoholic liquor under the direction of the state police, the
22 commission, or a local police agency as part of an enforcement
23 action.

24 (6) Any initial or contemporaneous purchase or receipt of
25 alcoholic liquor by the minor under subsection (5) (a) or (b) must
26 have been under the direction of the state police, the commission,
27 or the local police agency and must have been part of the
28 undercover operation.

29 (7) If a minor participates in an undercover operation in



1 which the minor is to purchase or receive alcoholic liquor under
 2 the supervision of a law enforcement agency, his or her parents or
 3 legal guardian ~~shall~~**must** consent to the participation if ~~that~~
 4 ~~person~~**the minor** is less than 18 years of age.

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

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

- 18 (a) Decoy operations.
- 19 (b) Off-premises violations.
- 20 (c) On-premises violations.
- 21 (d) Repeat offenses within the 3 years preceding the date of
 22 ~~that~~**the** report.

23 (10) As used in this section:

- 24 (a) "Corrective action" means action taken by a licensee or a
 25 clerk, agent, or employee of a licensee designed to prevent a minor
 26 from further possessing or consuming alcoholic liquor on the
 27 licensed premises. Corrective action includes, but is not limited
 28 to, contacting a law enforcement agency and ejecting the minor and
 29 any other person suspected of aiding and abetting the minor.



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

4 (i) **An** examination of an official Michigan operator's or
5 chauffeur's license, an official Michigan personal identification
6 card, a military identification card, or any other bona fide
7 picture identification ~~which~~ **that** establishes the identity and age
8 of the ~~person.~~ **individual**.

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

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

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

16 (C) **The identity of the individual was previously verified**
17 **through a commercially available knowledge-based electronic**
18 **authentication process.**

19 (D) **The authenticated picture identification was securely**
20 **linked to biometrics contemporaneously collected from the**
21 **individual.**

22 (c) "Retail licensee" means a person licensed to sell
23 alcoholic liquor at retail for consumption on or off the licensed
24 premises.

25 (d) "Secure identity verification device" means a commercial
26 device that instantly verifies the identity and age of an
27 individual by an electronic scan of a biometric of the individual.

