



SELLING ALCOHOL TO MINOR

House Bill 4035 (Substitute H-1) Revised First Analysis (5-28-02)

Sponsor: Rep. Jennifer Faunce
Committee: Regulatory Affairs

THE APPARENT PROBLEM:

Selling or furnishing alcohol to a minor, whether by a person licensed to sell alcohol or by a nonlicensed person, is prohibited under the Michigan Liquor Control Code. A violation is a misdemeanor and a person can be subject to a fine, imprisonment, or both. In addition to the criminal penalties, a retail liquor licensee and his or her clerks, agents, or employees who violate this prohibition are subject to administrative fines and sanctions. For the retail liquor licensee, three or more violations within a 24-month period can result in a suspended or revoked license.

When the state police or local police agency enforce a violation of the code's prohibition of selling or furnishing alcohol to a minor, a licensee cannot be charged with a criminal offense or subject to administrative action unless action is also taken against the minor who purchased or consumed alcohol or against the person 21 years or older who sold or furnished the alcohol to the minor. Though industry members believe that the intent of this provision was to hold the minor as well as any adult or clerk or server just as responsible as a licensee, in practice this is not always the case. Reportedly, a clerk or server who sells or furnishes alcohol to a minor is not always charged by the police. For the licensee who attempts to train and instruct employees in the law, the potential loss of his or her liquor license by a noncompliant employee poses an economic hardship. Some, therefore, feel that the laws should be clarified so that the clerk or employee is also held liable.

In a related matter, on occasion, the state police, local police agencies, or the Michigan Liquor Control Commission initiate an undercover operation in which a minor (with parental authorization) attempts to purchase liquor from a package store or on-premises licensee. It has been proposed that if a police- or commission-initiated "sting" results in a violation, that the code be changed to allow the offending employee to be responsible for a state civil

infraction, with a civil fine, instead of incurring a criminal charge, as is done currently.

THE CONTENT OF THE BILL:

The bill would revise certain penalties for the unlawful sale or furnishing of alcohol to minors. Currently, if a retail liquor licensee or his or her clerk, agent, or employee knowingly sells or furnishes alcohol to a minor, the individual is guilty of a misdemeanor punishable by imprisonment for up to six months, a fine of not more than \$500, or both. The bill would specify that if the violation was the result of an undercover operation in which the minor received alcohol under the direction of the Department of State Police (DPS), the Michigan Liquor Control Commission (MLCC), or a local police agency as part of an enforcement action, the retail liquor licensee's clerk, agent, or employee would be responsible for a state civil infraction and could be ordered to pay a civil fine of not more than \$100.

Under current law, if the enforcing agency involved with a violation is the state police or a local police agency, a retail liquor licensee cannot be charged with knowingly selling or furnishing alcohol to a minor unless enforcement action is taken against the minor who violated the liquor code's prohibition on minors purchasing, consuming, or possessing (or attempting to do the same) and enforcement action is taken against the person 21 years or older who sold or furnished the alcohol to the minor. The latter part of that provision would be rewritten to clarify that it pertained to a person who was not the retail licensee or his or her clerk, agent, or employee. The bill would add that enforcement action must be taken against the clerk, agent, or employee who directly sold or furnished alcoholic liquor to the minor before the licensee could be charged. The bill would specify that these provisions would not apply if the minor; the clerk, agent, or employee of the licensee; or the person 21 years or older who sold or furnished alcohol to the minor were not alive or present in the state at the time the licensee was charged. If the enforcing agency were the MLCC, the bill would

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require the MLCC to recommend to a local law enforcement agency that enforcement action be taken against a violator of the above provisions if an appearance ticket or civil infraction citation had not been issued.

Similar changes would be made to a provision pertaining to administrative sanctions by the MLCC against a licensee. Under the bill, before administrative sanctions such as an administrative fine or license suspension or revocation, enforcement action would have to be brought against the minor; the person 21 years or older; or the retail licensee's clerk, agent, or employee.

Currently, the code specifies that a person who is not a retail liquor licensee or his or her clerk, agent, or employee who knowingly sells or furnishes alcohol to a minor must be fined \$1,000 and may be sentenced to imprisonment for up to 60 days for a first offense, and must be fined \$2,500 and must be sentenced to imprisonment for up to 90 days for a second or subsequent offense and may be ordered to perform community service. The bill would rewrite this provision to instead specify that a person who violated this provision would be guilty of a misdemeanor punishable by a fine of \$1,000 and imprisonment for not more than 60 days for a first offense; a second or subsequent offense would be punishable by a fine of not more than \$2,500 and imprisonment for not more than 90 days, and the person could be ordered to perform community service.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill's changes to current law provisions regarding the imposition of fines for violations of the act could reduce local fine revenue. Any impact, however, is likely to be negligible. (5-20-02)

ARGUMENTS:

For:

Liquor licensees have invested a lot of time and money into building their businesses. Most practice responsible alcohol management, taking the laws prohibiting sales to minors very seriously. Many send their employees to commission-approved training programs such as TIPS, TAM, or Bar Code, where employees receive training in such things as recognizing fake IDs, how and when to check IDs, how to recognize and deal with intoxicated customers, and so forth. After all, since the store or

restaurant owned by the licensee is often that person's source of livelihood, it is in the licensee's best interests to have a properly trained staff that is fully aware of the laws and penalties regarding sales to minors.

However, a licensee, especially for larger establishments, cannot provide constant oversight of each clerk or server in his or her employ. Nor is it within the power of a licensee to completely prevent a clerk or server from intentionally selling or serving alcohol to an underage friend. Though under current law a clerk or server who sells or serves a minor can be charged along with the minor and the licensee, reportedly, this is not always happening. The result is that the licensee pays – in a literal sense – for the actions of his or her employee. Just three such incidents in a 24-month period can result in license suspension or revocation. Many in the industry, both on-premises and off-premises licensees, would like to see the clerk or server be held responsible for his or her actions, too. The bill would accomplish this by specifying that a licensee could not be charged for a violation unless the clerk or server – along with the minor and any other person over 21 involved in providing the alcohol to the minor – were also charged. By sharing the responsibility for upholding the state's zero tolerance laws, the bill should go a long way in helping licensees impress on their staffs the seriousness of underage drinking.

For:

Undercover operations, or "stings", are an important enforcement tool for police agencies to expose unscrupulous licensees or their employees. However, such operations also can be an important tool for licensees to impress on their staffs the serious nature of compliance with the code's prohibition on sales to minors. Also, by the nature of a sting, an artificial attempt to "buy" is created. If not for the fact that the minor's attempts to buy or obtain alcohol were part of a deliberate attempt to see if the employee could be induced to sell, the employee might not ever be faced with such a situation. Therefore, some feel that instead of charging an employee of a licensee with a misdemeanor charge and imposing criminal penalties for selling or furnishing alcohol to a minor during a sting operation, it would be more appropriate that the employee instead receive a civil infraction with a possible fine of up to \$100. This would only apply to a licensee's staff, and not to the licensee (who would still be subject to criminal and administrative penalties). A clerk or server who was cited would still learn a valuable lesson.

Against:

The committee substitute rewrote the penalty section for a person who is not a retail liquor licensee or clerk or employee of a licensee. Where it first appears that the changes were editorial in nature, upon closer scrutiny, the change in wording could potentially impact the manner in which a penalty is meted out. For instance, currently, the provision regarding selling or furnishing alcohol to minors states that a violator shall be fined \$1,000 and may be sentenced to imprisonment for up to 60 days for a first offense. The bill instead would specify that the offense would be punishable by a fine of \$1,000 and imprisonment for not more than 60 days. Reportedly, “punishable by” can be interpreted as being within the discretion of the court – meaning the court has the option to impose or not impose a fine, jail time, or either. Further, the code states that for a subsequent offense, the violator “shall receive a fine of \$2,500”, but the bill would change this to “a fine of *not more than* \$2,500”. Conceivably, this could lower a fine for a second or subsequent offense, if not remove it altogether, and such a fine could be set lower than what has been specified for a first offense under current law.

The trend in recent years has been to enact stiffer penalties in the fight to stem underage drinking. Too many young people have died, not just in car accidents, but in other accidents while under the influence of illegally obtained alcohol. In addition, young people face a greater risk of developing alcohol addictions and health problems from early drinking. Given the seriousness of minors having access to alcohol, the bill should be amended to clarify the penalties for a violation by a nonlicensee, and not carry the potential to lessen penalties.

POSITIONS:

The Michigan Restaurant Association supports the bill. (5-20-02)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.