

**SUBSTITUTE FOR  
HOUSE BILL NO. 4035**

A bill to amend 1998 PA 58, entitled  
"Michigan liquor control code of 1998,"  
by amending sections 701, 705, and 905 (MCL 436.1701, 436.1705,  
and 436.1905).

**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~~ SUBSECTIONS (4), (5),  
4       AND (6), a person who knowingly sells or furnishes alcoholic  
5       liquor to a minor, or who fails to make diligent inquiry as to  
6       whether the person is a minor, is guilty of a misdemeanor. A  
7       retail licensee or a retail licensee's clerk, agent, or employee  
8       who violates this subsection shall be punished in the manner  
9       provided for licensees in section 909 EXCEPT THAT IF THE  
10       VIOLATION IS THE RESULT OF AN UNDERCOVER OPERATION IN WHICH THE

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Sub. HB 4035 (H-1) as amended June 19, 2002 2

1 MINOR RECEIVED ALCOHOLIC LIQUOR UNDER THE DIRECTION OF THE STATE  
2 POLICE, THE COMMISSION, OR A LOCAL POLICE AGENCY AS PART OF AN  
3 ENFORCEMENT ACTION, THE RETAIL LICENSEE'S CLERK, AGENT, OR  
4 EMPLOYEE IS RESPONSIBLE FOR A STATE CIVIL INFRACTION AND MAY BE  
5 ORDERED TO PAY A CIVIL FINE OF NOT MORE THAN \$100.00.  
6 ~~Notwithstanding section 909 and except~~ EXCEPT as otherwise pro-  
7 vided in subsection (2), a person who is not a retail licensee or  
8 a retail licensee's clerk, agent, or employee and who violates  
9 this subsection ~~shall be fined~~ IS GUILTY OF A MISDEMEANOR PUN-  
10 ISHABLE BY A FINE OF [NOT MORE THAN] \$1,000.00 and ~~may be sentenced to~~  
11 ~~impris-~~  
12 ~~onment for up to~~ NOT MORE THAN 60 days for a first offense,  
13 ~~shall be fined~~ A FINE OF NOT MORE THAN \$2,500.00 and ~~shall be~~  
14 ~~sentenced to~~ imprisonment for ~~up to~~ NOT MORE THAN 90 days for  
15 a second or subsequent offense, and may be ordered to perform  
16 community service. A suitable sign describing the content of  
17 this section and the penalties for its violation shall be posted  
18 in a conspicuous place in each room where alcoholic liquor is  
19 sold. The signs shall be approved and furnished by the  
20 commission.  
21 (2) A person who is not a retail licensee or the retail  
22 licensee's clerk, agent, or employee and who violates  
23 subsection (1) is guilty of a felony, punishable by imprisonment  
24 for not more than 10 years ~~—,~~ or a fine of not more than  
25 \$5,000.00, or both, if the subsequent consumption of the alco-  
26 holic liquor by the minor is a direct and substantial cause of  
27 that person's death or an accidental injury that causes that  
person's death.

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

12           (4) If the enforcing agency involved in the violation is the  
13 state police or a local police agency, a licensee shall not be  
14 charged with a violation of subsection (1) or section 801(2)  
15 unless ~~enforcement~~ ALL OF THE FOLLOWING OCCUR, IF APPLICABLE:

16           (A) ENFORCEMENT action ~~under section 703~~ is taken against  
17 the minor who purchased or attempted to purchase, consumed or  
18 attempted to consume, or possessed or attempted to possess alco-  
19 holic liquor. ~~and, if applicable, enforcement~~

20           (B) ENFORCEMENT action is taken under this section against  
21 the person 21 years of age or older WHO IS NOT THE RETAIL  
22 LICENSEE OR THE RETAIL LICENSEE'S CLERK, AGENT, OR EMPLOYEE who  
23 sold or furnished the alcoholic liquor to the minor.

24           (C) ENFORCEMENT ACTION UNDER THIS SECTION IS TAKEN AGAINST  
25 THE CLERK, AGENT, OR EMPLOYEE WHO DIRECTLY SOLD OR FURNISHED  
26 ALCOHOLIC LIQUOR TO THE MINOR.

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1 (5) If the enforcing agency is the commission AND AN  
2 APPEARANCE TICKET OR CIVIL INFRACTION CITATION HAS NOT BEEN  
3 ISSUED, then the commission shall recommend to a local law  
4 enforcement agency that enforcement action be taken against a  
5 violator of this section or section 703 who is not a licensee.  
6 However, ~~this~~ subsection (4) does not apply ~~under any of the~~  
7 ~~following circumstances:~~ ~~(a) The person~~ IF THE MINOR against  
8 whom enforcement action is taken under section 703, THE CLERK,  
9 AGENT, OR EMPLOYEE OF THE LICENSEE WHO DIRECTLY SOLD OR FURNISHED  
10 ALCOHOLIC LIQUOR TO THE MINOR, or the person 21 years of age or  
11 older who sold or furnished alcoholic liquor to the minor is not  
12 alive or is not present in this state at the time the licensee is  
13 charged. SUBSECTION (4)(A) DOES NOT APPLY UNDER EITHER OF THE  
14 FOLLOWING CIRCUMSTANCES:

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

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

25 (6) ANY initial or contemporaneous purchase or receipt of  
26 alcoholic liquor by the minor ~~shall~~ UNDER SUBSECTION (5)(A) OR  
27 (B) MUST have been under the direction of the state police, the

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1 commission, or the local police agency and ~~shall~~ MUST have been  
2 part of the undercover operation.

3 (7) ~~(5)~~ If a minor participates in an undercover operation  
4 in which the minor is to purchase or receive alcoholic liquor  
5 under the supervision of a law enforcement agency, his or her  
6 parents or legal guardian shall consent to the participation if  
7 that person is less than 18 years of age.

8 (8) ~~(6)~~ In an action for the violation of this section,  
9 proof that the defendant or the defendant's agent or employee  
10 demanded and was shown, before furnishing alcoholic liquor to a  
11 minor, a motor vehicle operator's or chauffeur's license or a  
12 registration certificate issued by the federal selective service,  
13 or other bona fide documentary evidence of the age and identity  
14 of that person, shall be a defense to an action brought under  
15 this section.

16 (9) ~~(7)~~ The commission shall provide, on an annual basis,  
17 a written report to the department of state police as to the  
18 number of actions heard by the commission involving violations of  
19 this section and section 801(2). The report shall include the  
20 disposition of each action and contain figures representing the  
21 following categories:

22 (a) Decoy operations.

23 (b) Off-premises violations.

24 (c) On-premises violations.

25 (d) Repeat offenses within the 3 years preceding the date of  
26 that report.

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1 (10) ~~-(8)-~~ As used in this section:

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

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

15 Sec. 705. A peace officer or law enforcement officer  
16 described under section 201 or an inspector of the commission who  
17 witnesses a violation of section 701(1) OR 703, or a local ordi-  
18 nance corresponding to section 701(1) OR 703, may stop and detain  
19 a person and obtain satisfactory identification, seize illegally  
20 possessed alcoholic liquor, and issue an appearance ticket as  
21 prescribed in section ~~9b-~~ 9C of chapter IV of the code of crimi-  
22 nal procedure, 1927 PA 175, MCL ~~764.9b-~~ 764.9C.

23 Sec. 905. (1) Notwithstanding section 903, if a retail  
24 licensee or a retail licensee's clerk, agent, or employee vio-  
25 lates this act by selling or furnishing alcoholic liquor to a  
26 minor, or by allowing a minor to consume alcoholic liquor or  
27 possess alcoholic liquor for personal consumption on the licensed

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1 premises, and if the enforcing agency involved in the prosecution  
2 of the violation is the state police or a local police agency,  
3 the commission shall not take any action under section 903 to  
4 suspend or revoke the licensee's license or assess ~~a penalty~~ AN  
5 ADMINISTRATIVE FINE against the licensee unless ~~enforcement~~ ALL  
6 OF THE FOLLOWING OCCUR, IF APPLICABLE:

7 (A) ENFORCEMENT action is taken against the minor who pur-  
8 chased, consumed, or received the alcoholic liquor from the  
9 retail licensee or the retail licensee's clerk, agent, or  
10 employee. ~~and, if applicable, enforcement~~

11 (B) ENFORCEMENT action is taken under ~~this~~ section 701  
12 against the person 21 years of age or older THAT IS NOT THE  
13 RETAIL LICENSEE OR THE RETAIL LICENSEE'S CLERK, AGENT, OR  
14 EMPLOYEE BUT who sold or furnished the alcoholic liquor to the  
15 minor.

16 (C) ENFORCEMENT ACTION IS TAKEN UNDER SECTION 701 AGAINST  
17 THE RETAIL LICENSEE'S CLERK, AGENT, OR EMPLOYEE.

18 (2) Subsection (1) does not apply ~~under either of the fol-~~  
19 ~~lowing circumstances:~~ ~~(a) The~~ IF THE enforcing agent involved  
20 in the prosecution is a commission inspector rather than a police  
21 agency.

22 (3) ~~(b) The~~ SUBSECTION (1)(A) DOES NOT APPLY IF THE prose-  
23 cution of the violation is the result of an undercover operation  
24 in which the minor who purchased, consumed, or received the alco-  
25 holic liquor acted under the direction of the state police or a  
26 local police agency as part of the enforcement action and such

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1 enforcement action is otherwise in compliance with section  
2 701(4), (5), AND (6).