

LIQUOR: PENALTIES FOR MINORS

Senate Bill 132 (Substitute H-4)
Senate Bill 133 as passed by the Senate

First Analysis (6-17-91)

Sponsor: Sen. James A. Barcia
Senate Committee: State Affairs and
Military/Veterans Affairs
House Committee: Liquor Control

THE APPARENT PROBLEM:

The Liquor Control Act contains a number of penalties for liquor licensees who sell or furnish liquor to people under the age of 21 (minors). The penalties range from suspension or revocation of the licensee's liquor license and civil fines, to criminal prosecution on misdemeanor charges. Minors who buy liquor, however, are subject only to mild civil fines and the possibility of having to participate in a substance abuse prevention program.

Licensees have long believed that this discrepancy between the possible penalties incurred by themselves and by minors who violate the law is unfair. What is more, licensees reportedly are more likely to be prosecuted and penalized, while minors involved in the same violations are seldom prosecuted. (In fact, reportedly, sometimes minors who are caught in violation of the act are not prosecuted in exchange for helping law enforcement officers catch licensed sellers selling liquor to the minor.)

Many people also believe that the penalties for underage drinkers are so minimal as to be ineffective even when imposed, and that minors should be discouraged not only from having and drinking alcohol but also from trying to buy alcohol. Legislation has been introduced that would address these concerns.

THE CONTENT OF THE BILLS:

Senate Bill 132 (Substitute H-4) would amend the Liquor Control Act (MCL 436.33 et al.) to require mandatory driver's license suspensions of minors who were convicted of trying to buy, buying, or drinking alcohol. In addition, the bill would increase the amount of the possible fines, require parental notification, and the Office of Substance Abuse in

the Department of Public Health would receive 100 percent (rather than the present 50 percent) of the fine revenues. Senate Bill 133 would amend the Michigan Vehicle Code (MCL 257.625i and 257.319e) to allow the secretary of state to suspend and restrict driver's licenses for violations of the Liquor Control Act and would require reporting of citation and arrests for violations as part of the Michigan Annual Drunk Driving Audit. Neither bill could take effect unless both were enacted.

Following is a more detailed description of Senate Bill 132.

Penalties for minors. The bill would increase the amount of the civil fines for minors buying or drinking alcohol, establish \$100 minimum and \$500 maximum civil fines, add fines for minors attempting to buy alcohol, allow the court to require minors to undergo substance abuse screening and assessment at their expense, allow minors to be required to perform community service or participate in substance abuse prevention services or treatment and rehabilitation services, and require driver's license suspensions.

In addition, the bill would require that within 48 hours of determining that a minor under 18 years old had allegedly drunk, possessed, bought, or tried to drink, possess, or buy alcohol, a law enforcement agency would have to inform the minor's parents or guardian.

License suspension lengths would depend on whether the offense was a first, second, or subsequent offense. For a first offense, the minor's license would be suspended for 90 days, with the possibility of the minor being allowed a restricted license. A second offense would result in a

suspension of 90 to 180 days, and a restricted license could be allowed after the first 30 days of the suspension. For third and subsequent offenses, the suspension would be from 180 days to a year, with no possibility of a restricted license.

Disposition of revenues. All of the fines collected (instead of the present 50 percent) would go to the Department of Public Health for substance abuse prevention, treatment, and rehabilitation services.

Furnishing liquor to minors. Although the Liquor Control Act already specifies that anyone who knowingly sells or furnishes alcohol to underage people is guilty of a misdemeanor (and that anyone who violates any provisions of the act is guilty of a misdemeanor), the bill would specify that it would be a misdemeanor for someone over 21 to furnish liquor to a minor. Violators would be subject to a mandatory \$500 fine and possible imprisonment for up to 90 days or community service.

Court responsibilities. Immediately upon the finding of a civil infraction, a probate court order of disposition for a violation of the bill, or the entry of a default judgment, the court would have to consider all "prior findings of a civil infraction, convictions, or probate court orders of disposition. . . or a local ordinance or law of another state substantially corresponding" to the bill's provisions in order to decide the length of the license suspension and whether a restricted license could be granted.

Courts also would have to order the violator to surrender his or her license and forward a notice of court-ordered license sanctions to the secretary of state, as well as a notice when the sanction was imposed. If the license were not forwarded to the secretary of state, the court would have to attach an explanation.

The bill also would specify that for purposes of adjudicating violations of the bill, the district court would have jurisdiction over underage people between 17 and 21 years old and the juvenile court would have jurisdiction over minors under 17 years old.

Reporting. The Liquor Control Commission would be required to report annually to the Department of State Police the number of actions heard by the commission involving minors-in-possession (including attempted possession). The report would

have to include how each case was resolved, and the number of decoy operations, off- and on-premises violations, and repeat offenses within three years preceding the report.

Exemptions. The bill would exempt from its provisions:

- * licensees involved in violations that were part of approved (by the local prosecutor) employer-sponsored undercover operations ("stings") and
- * minors involved in undercover operations sponsored by their employers, the state police, the Liquor Control Commission, or a local police agency.

In addition, minors in violation of the act would be specifically exempted from the act's criminal penalties.

HOUSE COMMITTEE ACTION:

The House Committee on Liquor Control adopted a substitute incorporating a number of technical amendments to Senate Bill 132, including changing the references in the bill as passed by the Senate from "civil violation" to "civil infraction" (the latter is defined in Michigan law, the former is not), clarifying jurisdiction of minor-in-possession violations, and by changing the effective date to December 1, 1991 (instead of 60 days after enactment). In addition, the committee substitute requires that if a court did not forward a license to the secretary of state as required, an explanation of the reason why would have to be attached to the notice of the court-ordered sanctions that was forwarded to the secretary of state.

FISCAL IMPLICATIONS:

The Department of State reports that the bill would result in 5,000 additional driver license suspensions, costing \$110,00 in administrative costs and bringing in \$300,000 in additional revenues from license reinstatement fees. (5-24-91)

Added revenues from fines for substance abuse services is estimated by the House Democratic Staff at \$800,000 the first year after the bill takes effect. (6-13-91)

According to the Senate Fiscal Agency, by crediting all fines collected under the Senate Bill 132 to the Department of Public Health, and by imposing a minimum fine of \$100, the bill would create a

revenue loss to those courts that currently assess and collect fines from underage drinkers. Since the current maximum fine is only \$25 for a first offense, Senate Bill 132 would effectively deprive courts of each \$12.50 per fine currently collected, but would, due to the proposed higher minimum fine, deprive the courts of at least \$50 for each future fine. As the Senate Fiscal Agency analysis points out, however, an estimate of the total revenue collected by the courts is unavailable. (3-25-91)

BACKGROUND INFORMATION:

The Liquor Control Act prohibits the sale of alcoholic liquor to people who are less than 21 years old (i.e. minors), and specifically prohibits (a) retail licensees from selling, furnishing, or giving ("directly, individually, or by a clerk, agent, or servant") alcoholic liquor to minors and (b) minors from buying, possessing or consuming (in a licensed premise) alcoholic liquor. Someone who knowingly sells or furnishes alcoholic liquor to a minor (or who fails to try to find out whether the buyer is a minor) is guilty of a misdemeanor. The act also says that anyone who violates the act is guilty of a misdemeanor, while anyone who is not licensed but who does anything requiring a license under the act is guilty of a felony.

If a licensee violates the act, the Liquor Control Commission may suspend or revoke the liquor license, assess a \$300 fine for each violation, and, when the violation consists of selling or furnishing alcoholic liquor to a minor, may assess a \$1,000 fine in addition to (or instead of) suspending or revoking the license. The commission must suspend or revoke a liquor license if the licensee has sold or furnished alcoholic liquor to a minor three or more times within 24 months. The act also says that any licensee who violates the act (or any rule or regulation promulgated by the Liquor Control Commission) is guilty of a misdemeanor, punishable by up to six months in the county jail and a fine of \$500.

If a minor buys, has, or drinks (in a licensed establishment) alcoholic liquor, he or she can be assessed a civil fine of up to \$25 for a first offense, up to \$50 for a second offense, and up to \$100 for a third or subsequent offense. In addition, second and subsequent offenders may be required to participate in a substance abuse prevention program. Minors who use false identification to get alcohol--and anyone furnishing them with a false

ID--are guilty of a misdemeanor and are subject to a 90-day driver's license suspension.

ARGUMENTS:

For:

The bills would cut down on underage drinking, thereby deterring minors from drinking and driving, and, hopefully, decrease the number of deaths and injuries caused by teenaged drunk drivers. Teenage alcohol abuse is a serious problem in Michigan, and reportedly a leading cause of death for teenagers and adults in their twenties (which higher automobile insurance premiums for younger drivers would seem to bear out). According to an analysis by the Department of State, Michigan State Police records show that 5,569 drivers between the ages of 18 and 20 were charged with operating under the influence of liquor (OUIL) during 1989. Currently, minors have little legal incentive not to drink, while at the same time being under great social pressures to drink, both from their peers and from advertising by the liquor industry. Minors are subject to mild civil fines for buying or consuming liquor; there are no legal sanctions against their trying to buy liquor. They can, and reportedly often do, go from bar to bar or party store to party store until they find someone who fails to check for identification or who is fooled by a false ID. Reportedly, minors also make nuisances of themselves by hanging around outside party stores trying to persuade potential customers of legal drinking age to buy liquor for them. (There also are reports of legal-aged customers charging minors, either in money or alcohol, for buying liquor for the minors.) Minors are not deterred from drinking by the low civil fines, which reportedly rarely are imposed anyway, but they do value their driver's licenses. By mandating suspension of this highly valued privilege, these bills would make young adults responsible for their actions, could provide a deterrent for underage drinkers, and, in the long run, could save many lives.

Response:

If the point of the bills is to deter minors from drinking and driving, then the research evidence shows that license suspension or revocation is not effective in deterring people from driving. For example, an article in Alcohol, Drugs and Driving (January/March 1991) points out that most suspended and revoked drivers continue to drive without licenses. Although there apparently is no good data on the proportion of compliant drivers (that is, drivers who stop driving when their licenses

are suspended or revoked), the study points out that the proportion has never been thought to be a majority, and that in this particular study compliance was claimed by about a third (though the author also notes that even this self-report is probably high, given "the social desirability" of claiming not to drive with a revoked or suspended license). What is more, the author suggests that the experience of driving while unlicensed teaches that participation in the licensing system is unnecessary if one takes precautions in the amount and nature of driving, resulting in possible disincentives for drivers to seek relicensure. The author reports that "this possibility is consistent with informal reports from licensing authorities in various states that large numbers of revoked drivers fail to request new licenses once their revocations have expired."

Reply:

Even if people continue to drive with revoked or suspended licenses, the study referred to above also notes that the majority of suspended and revoked drivers who continued to drive did so less frequently and more cautiously. They were apprehensive about being arrested for driving without licenses and tried to drive so as not to be stopped and interrogated by the police. In fact, according to the study, the violation and accident rates of suspended and revoked drivers were far lower than those drivers before punishment, with the rates of groups of drivers that had been far more dangerous than average when fully licensed tending to have rates close to average following license deprivation. So license suspension would seem to have an important safety benefit, even if it does not stop people from driving.

For:

The bills would right existing inequities in the penalties for licensees and minors who are in violation of the Liquor Control Act. Although at least two parties violate the act every time a minor succeeds in buying liquor, it is the liquor licensee--the bar or party store owner--who is likely to be prosecuted on criminal charges, while the minor is let off with either no punishment or, at most, a mild civil fine (a maximum of \$25 for a first offense). The minimal civil fines for minors operate as disincentives for police to enforce the law, for courts to prosecute the minor (reportedly it costs courts between \$200 and \$300 to prosecute a minor for violating the Liquor Control Act), or for minors to obey the law. Licensees who sell alcohol to minors, however, are subject to criminal charges, the

possible loss of their license, and, in effect, the possible loss of their business.

It is very difficult for licensed bar and party store owners to ensure that only people of legal age buy or consume liquor sold in their establishments. Even as licensees have tried to prevent sales to minors, minors have become more creative in their efforts to circumvent the law, wearing disguises and using fake IDs. The bill would rectify the existing inequities in the penalties for licensees and minors by subjecting minors to stiff mandatory--and, to them, meaningful--penalties

Response:

Liquor licensees already are adequately protected in law from minors who attempt to buy alcohol. All liquor licensees have to do is to ask potential buyers for proper identification. If the licensee (or his or her agent or employee) demands and is shown a driver's license (or draft card or "other bona fide documentary evidence of the age and identity of that person") before furnishing liquor to a minor, then the licensee is legally protected. (The Liquor Control Act says that "in an action [against a licensee for selling alcohol to a minor]. . . proof that the defendant demanded and was shown, before furnishing alcoholic liquor to a person under 21 years of age, a motor vehicle operator's license, . . . or other bona fide documentary evidence of the age and identity of that person, shall be a defense to an action under this section." MCL 436.33[2])

In addition to failing to ask for proper ID, however, apparently some licensees fail to understand that even if someone provides what appears to be proof that they are legally of age to buy liquor, the licensee still is not legally obligated to sell the liquor if he or she has doubts as to the age of the potential buyer.

In any case, so long as the licensee makes "diligent inquiry" (i.e., asks for acceptable proof) as to whether the potential buyer is less than 21, he or she is legally protected. The real problem, it would seem, is that licensees are not diligent enough in asking for IDs. But that is a problem that the licensees should be responsible for rectifying (by requiring such identification before selling liquor), rather than suspending the driver's licenses of the minors attempting to buy alcohol from the licensee.

For:

The bill would resolve existing jurisdictional confusion by clarifying the status of minor-in-

possession offenses. Currently, there is confusion concerning which court has jurisdiction over civil infraction violators who are under 17 years old. The vehicle code (MCL 257.741) and the Revised Judicature Act (MCL 600.8301) give the district court exclusive jurisdiction over civil infractions, while the juvenile code (MCL 712A.2(a)[1]) gives the probate court exclusive jurisdiction over all matters involving minors under the age of 17. The bill would resolve this conflict in law presents in relation to minor-in-possession offenses by explicitly stating which courts would have jurisdiction under which circumstances.

Against:

Drivers' licenses should not be suspended for offenses not involving motor vehicles. Such suspension would reduce the deterrent effects of the current drunk driving license suspensions (by increasing the possibility that someone's license already would be suspended or revoked), and the penalty is harsher for those who have driver's licenses than for those who do not. It also would result in out-of-state (including foreign) underage drinkers being treated more leniently than state residents. If minors' licenses could be suspended for non-driving offenses, why not use license suspensions to deter other crimes? For example, why not suspend the driver's license of anyone convicted of shoplifting? Or for attempted robbery? Or for breaking and entering? If suspension of driver's licenses is to be extended to non-driving related offenses, where will it stop?

Response:

As a matter of fact, existing laws do provide for suspension of driver's licenses for non-driving offenses. The Alcohol Control Act already allows for the suspension of minors' driver's licenses for using any fake ID (not just driver's licenses) in buying alcohol. And Public Act 63 of 1982 allows for suspension of a driver's license for someone who steals gas from a self-service station by driving away without paying. Last year's federal Department of Transportation appropriations act (enacted in November of 1990) also imposes highway funding sanctions on states failing to suspend or revoke driver's licenses for six months for conviction on any drug offense. And a number of other states have enacted laws that revoke or suspend the driver's licenses of minors who drop out of school (with a similar such bill having been introduced into the Michigan legislature last session). So legislatures are indeed recognizing the effectiveness of using

license suspensions to discourage illegal or undesirable behavior.

Reply:

In the first place, Public Act 63 of 1982 does not mandate, but rather allows, suspension of a driver's license for theft from self-service gas stations. In the second place, the theft is tied to driving--the theft must occur by pumping the fuel into a motor vehicle; the act does not apply to cases where gas is stolen by being pumped into a can and taken away. With regard to the license suspensions of school dropouts, the fact that legislatures have enacted such laws does not make them good laws. For one thing, such laws impose legal penalties for otherwise legal actions (dropping out of school after a certain age and before turning eighteen). Reportedly, moreover, these laws are currently being challenged on constitutional grounds, so they hardly constitute firm legal precedents.

Against:

Mandating the suspension of a driver's license, particularly for a non-driving offense, could result in constitutional challenges. Contrary to the belief of many that a driver's license is a privilege, not a right, courts have found that in fact "a driver's license, once issued, is a significant interest subject to constitutional due process protection." [*Bell v Burson*, 402 US 535, 539; 91 S Ct 1586; 29 L Ed 2d 90 (1971)]. The United States Court of Appeals (Third Circuit), found in *Lutz v City of York, Pennsylvania* that there is a constitutional right of intrastate travel, growing out of substantive due process. The court further compared this right to that of free speech, saying that "In setting a standard of review to evaluate restrictions that significantly impinge on that right, we apply intermediate scrutiny, as suggested by analogy to the time, place and manner doctrine so firmly entrenched in the jurisprudence of free speech."

Against:

Senate Bill 132 could increase court caseloads at a time when the courts already are overburdened with more serious cases. What is more, its imposition of mandatory fines could have a negative impact on the courts' ability to collect court costs from defendants, as many court analysts believe that high mandatory fines increase the court's administrative burden for collection of fines and costs and undermine the court's ability to recoup some of the costs of court operations through the assessment of court costs.

Against:

While it is true that the present fines for underage drinkers are too low to effectively deter minors from buying and drinking alcohol, effective deterrents--in the form of stiff fines, community service, and parental notification, both for buying and for attempting to buy alcohol--can be instituted without resorting to the questionable practice of driver's license suspension. Community service, in particular, can be a meaningful way to tailor the punishment to fit the offense. An underage person who, say, helped out in a hospital emergency room could see first hand the consequences of drinking and driving.

Response:

Fines alone will not stop minors from drinking or trying to buy alcohol. If the fines go too high, these young adults may not have the money to pay them, and so likely simply won't pay them. But the value that young people place on driver's licenses is well known. The possibility of having a driver's license suspended is much more likely to be effective than the threat of a stiff fine.

POSITIONS:

The Liquor Control Commission (in the Department of Commerce) supports the bills. (6-14-91)

The Department of State supports the bills. (6-17-91)

The Michigan Sheriffs Association supports the bills. (6-12-91)

The Michigan Association of Chiefs of Police supports the bills. (6-14-19)

The Associated Food Dealers of Michigan, and its affiliate, the Package Liquor Dealers Association, support the bills. (6-14-91)

The Michigan Petroleum Association supports the bills. (6-17-91)

The Michigan Association of Convenience Stores support the bills. (6-17-91)

The Michigan Beer and Wine Wholesalers Association supports the bills. (6-17-91)

The Michigan Licensed Beverage Association supports the bills. (6-17-91)

The Michigan Grocers Association supports the bills. (6-17-91)

The Michigan Municipal League supports the concept of the bills. (6-17-91)

The Michigan District Judges Association opposes the bills. (6-7-91)

The Michigan Collegiate Coalition opposes the bills. (6-12-91)

The Resident Halls Association of Michigan State University opposes the bills. (6-12-91)