

# HOUSE BILL No. 5935

June 11, 1992, Introduced by Reps. London, Bartnik, Porreca, Nye, Willis Bullard, Munsell, Dalman, Bobier, Martin, Sikkema, Bender, Randall, Rocca, Gernaat, Gnodtke, Bodem, Brackenridge, Oxender, McNutt, Strand, Goss, Hoffman, Jamian, Horton, Shugars, Griffin, Allen, McBryde, Fitzgerald, Middaugh, Middleton, Hillegonds and DeLange and referred to the Committee on Judiciary.

A bill to amend sections 33, 33a, 33b, and 33c of Act No. 8 of the Public Acts of the Extra Session of 1933, entitled as amended

"The Michigan liquor control act,"

section 33a as amended by Act No. 123 of the Public Acts of 1985, section 33b as amended by Act No. 176 of the Public Acts of 1986, and section 33c as amended by Act No. 12 of the Public Acts of 1983, being sections 436.33, 436.33a, 436.33b, and 436.33c of the Michigan Compiled Laws.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Section 1. Sections 33, 33a, 33b, and 33c of Act No. 8 of  
2 the Public Acts of the Extra Session of 1933, section 33a as  
3 amended by Act No. 123 of the Public Acts of 1985, section 33b as  
4 amended by Act No. 176 of the Public Acts of 1986, and section  
5 33c as amended by Act No. 12 of the Public Acts of 1983, being

1 sections 436.33, 436.33a, 436.33b, and 436.33c of the Michigan  
2 Compiled Laws, are amended to read as follows:

3       Sec. 33. (1) Alcoholic liquor shall not be sold or fur-  
4 nished to a person unless the person has attained 21 years of  
5 age. A person who knowingly sells or furnishes alcoholic liquor  
6 to a person who is less than 21 years of age, or who fails to  
7 make diligent inquiry as to whether the person is less than 21  
8 years of age, is guilty of a misdemeanor. NOTWITHSTANDING  
9 SECTION 50, A PERSON WHO VIOLATES THIS SUBSECTION SHALL BE FINED  
10 NOT LESS THAN \$250.00 AND MAY BE SENTENCED TO IMPRISONMENT FOR  
11 NOT MORE THAN 90 DAYS. A suitable sign ~~which describes~~  
12 DESCRIBING THE CONTENT OF this section and the penalties for  
13 ~~violating this section~~ ITS VIOLATION shall be posted in a con-  
14 spicuous place in each room where alcoholic ~~liquors are~~ LIQUOR  
15 IS sold. The signs shall be approved and furnished by the ~~state~~  
16 ~~liquor control~~ commission.

17       (2) In an action for the violation of this section, proof  
18 that the defendant or the defendant's agent or employee demanded  
19 and was shown, before furnishing alcoholic liquor to a person  
20 ~~under~~ LESS THAN 21 years of age, a motor vehicle operator's OR  
21 CHAUFFEUR'S license or a registration certificate issued by the  
22 federal selective service, or other bona fide documentary evi-  
23 dence of the age and identity of that person, shall be a defense  
24 to an action BROUGHT under this section.

25       Sec. 33a. (1) A person less than 21 years of age shall not  
26 knowingly transport or possess, in a motor vehicle, alcoholic  
27 liquor unless the person is employed by a licensee under this

1 act, a common carrier designated by the commission, the ~~liquor~~  
2 ~~control~~ commission, or an agent of the ~~liquor control~~ commis-  
3 sion and is transporting or having the alcoholic liquor in a  
4 motor vehicle under the person's control during regular working  
5 hours and in the course of the person's employment. A person who  
6 violates this subsection is guilty of a misdemeanor.

7       (2) Within 30 days after the conviction of a person for the  
8 violation of subsection (1), which conviction has become final,  
9 complaint may be made by the arresting officer or the officer's  
10 superior before the court from which the warrant was issued,  
11 which complaint shall be under oath and shall contain a descrip-  
12 tion of the motor vehicle in which alcoholic liquor was possessed  
13 or transported by the person less than 21 years of age in commit-  
14 ting the offense and ~~praying~~ REQUESTING that the motor vehicle  
15 be impounded as provided in this section. Upon the filing of the  
16 complaint the court shall issue ~~an order~~ to the owner of the  
17 motor vehicle AN ORDER to show cause why the motor vehicle shall  
18 not be impounded. The order to show cause shall have a date and  
19 time fixed in the order for a hearing, which date shall not be  
20 less than 10 days after the issuance of the order and shall be  
21 served by delivering a true copy to the owner not less than 3  
22 full days before the date of hearing or, if the owner cannot be  
23 located, by sending a true copy by certified mail to the last  
24 known address of the owner. If the owner is a nonresident of the  
25 state, service may be made upon the secretary of state as pro-  
26 vided in section 403 of the Michigan vehicle code, Act No. 300 of

1 the Public Acts of 1949, as amended, being section 257.403 of the  
2 Michigan Compiled Laws.

3 (3) If the court determines upon the hearing of the order to  
4 show cause, from competent and relevant evidence, that at the  
5 time of the commission of the offense the motor vehicle was being  
6 driven by the person less than 21 years of age with the express  
7 or implied consent or knowledge of the owner, and that the use of  
8 the motor vehicle is not needed by the owner in the direct pur-  
9 suit of the owner's employment or the actual operation of the  
10 owner's business, the court shall authorize the impounding of the  
11 vehicle for a period, to be determined by the court, of not less  
12 than 15 days nor more than 30 days. The court's order authoriz-  
13 ing the impounding of the vehicle shall authorize a law enforce-  
14 ment officer to take possession, without other process, of the  
15 motor vehicle wherever located and to store the vehicle in a  
16 public or private garage at the expense and risk of the owner of  
17 the vehicle. ~~Appeal shall lie from~~ THE OWNER OF THE VEHICLE  
18 MAY APPEAL the order to the circuit court ~~of the county~~ and the  
19 provisions governing the taking of appeals from judgments for  
20 damages shall ~~be applicable~~ APPLY to the appeal. This section  
21 ~~shall~~ DOES not prevent a bona fide lienholder from exercising  
22 rights under a lien.

23 (4) A person who knowingly transfers title to a motor vehi-  
24 cle for the purpose of avoiding this section is guilty of a  
25 misdemeanor.

26 (5) THE COURT SHALL ORDER THE SECRETARY OF STATE TO SUSPEND,  
27 PURSUANT TO SECTION 319 OF ACT NO. 300 OF THE PUBLIC ACTS OF

1 1949, BEING SECTION 257.319 OF THE MICHIGAN COMPILED LAWS, FOR A  
 2 PERIOD OF 180 DAYS, THE OPERATOR OR CHAUFFEUR LICENSE OF A PERSON  
 3 CONVICTED OF A VIOLATION OF SUBSECTION (1). THE COURT SHALL  
 4 IMMEDIATELY FORWARD THE SURRENDERED LICENSE AND A CERTIFICATE OF  
 5 CONVICTION TO THE SECRETARY OF STATE. A SUSPENSION ORDERED UNDER  
 6 THIS SUBSECTION SHALL BE IN ADDITION TO ANY OTHER SUSPENSION OF  
 7 THE PERSON'S OPERATOR OR CHAUFFEUR LICENSE.

8 (6) THE COURT SHALL ORDER A PERSON FOUND GUILTY OF VIOLATING  
 9 SUBSECTION (1) TO PARTICIPATE IN SUBSTANCE ABUSE PREVENTION OR  
 10 TREATMENT SERVICES AS DEFINED IN SECTION 6107 OF THE PUBLIC  
 11 HEALTH CODE, ACT NO. 368 OF THE PUBLIC ACTS OF 1978, BEING SEC-  
 12 TION 333.6107 OF THE MICHIGAN COMPILED LAWS, AT HIS OR HER OWN  
 13 EXPENSE.

14 (7) A LAW ENFORCEMENT AGENCY SHALL NOTIFY THE PARENT OR PAR-  
 15 ENTS, CUSTODIAN, OR GUARDIAN OF A PERSON CONVICTED UNDER  
 16 SUBSECTION (1) IF THE PERSON IS LESS THAN 18 YEARS OF AGE. IF  
 17 THE PERSON IS ATTENDING ELEMENTARY OR SECONDARY SCHOOL, THE LAW  
 18 ENFORCEMENT AGENCY SHALL NOTIFY THE PRINCIPAL OF THE SCHOOL THAT  
 19 THE PERSON IS ATTENDING.

20 Sec. 33b. (1) A person less than 21 years of age shall not  
 21 purchase alcoholic liquor, consume alcoholic liquor, ~~in a~~  
 22 ~~licensed premises,~~ or possess alcoholic liquor, except as pro-  
 23 vided in THIS SECTION AND section 33a(1). ~~of this act. A~~  
 24 NOTWITHSTANDING SECTION 50, A person less than 21 years of age  
 25 who violates this subsection is RESPONSIBLE FOR A CIVIL INFRAC-  
 26 TION AS DEFINED IN SECTION 113 OF THE REVISED JUDICATURE ACT OF  
 27 1961, ACT NO. 236 OF THE PUBLIC ACTS OF 1961, BEING SECTION

1 600.113 OF THE MICHIGAN COMPILED LAWS, IS liable for the  
2 following civil fines AND SANCTIONS, and ~~shall~~ IS not ~~be~~  
3 subject to ~~the penalties prescribed in~~ section 50:

4 (A) ~~(i)~~ For the first violation a fine of not ~~more~~ LESS  
5 than \$25.00 AND MAY ATTEND A SUBSTANCE ABUSE EDUCATION PROGRAM AT  
6 HIS OR HER OWN EXPENSE. THE PROGRAM SHALL BE APPROVED BY THE  
7 ADMINISTRATOR OF THE OFFICE OF SUBSTANCE ABUSE SERVICES.

8 (B) ~~(ii)~~ For a second violation a fine of not ~~more~~ LESS  
9 than \$50.00 ~~, or participation~~ AND MAY BE ORDERED TO  
10 PARTICIPATE in A substance abuse ~~prevention~~ SCREENING AND  
11 ASSESSMENT services ~~as defined in section 6107 of the public~~  
12 ~~health code, Act No. 368 of the Public Acts of 1978, being sec-~~  
13 ~~tion 333.6107 of the Michigan Compiled Laws and designated~~  
14 PROGRAM APPROVED by the administrator of THE OFFICE OF substance  
15 abuse services ~~, or both~~ AT HIS OR HER OWN EXPENSE.

16 (C) ~~(iii)~~ For a third or subsequent violation a fine of  
17 not ~~more~~ LESS than \$250.00. ~~\$100.00, or participation in sub-~~  
18 ~~stance abuse prevention services as defined in section 6107 of~~  
19 ~~the public health code, Act No. 368 of the Public Acts of 1978,~~  
20 ~~and designated by the administrator of substance abuse services,~~  
21 ~~or both.~~

22 (2) ~~Fifty~~ SEVENTY-FIVE percent of the fines collected  
23 under subsection (1) shall be deposited with the state treasurer  
24 for deposit in the general fund to the credit of the department  
25 of public health for substance abuse PREVENTION, treatment, and  
26 rehabilitation services AND ALLOCATED TO THE COUNTY IN WHICH THE

1 OFFENSE OCCURRED FOR USE BY THE COUNTY HEALTH DEPARTMENT FOR THE  
2 PROGRAMS DESCRIBED IN SUBSECTION (1).

3 (3) A person who furnishes fraudulent identification to a  
4 person less than 21 years of age, or a person less than 21 years  
5 of age who uses fraudulent identification to purchase alcoholic  
6 liquor, is guilty of a misdemeanor. The court shall order the  
7 secretary of state to suspend, PURSUANT TO SECTION 319(5) OF THE  
8 MICHIGAN VEHICLE CODE, ACT NO. 300 OF THE PUBLIC ACTS OF 1949,  
9 BEING SECTION 257.319 OF THE MICHIGAN COMPILED LAWS, for a period  
10 of 90 days, the operator or chauffeur license of a person who is  
11 convicted of using fraudulent identification in violation of this  
12 subsection and the operator or chauffeur license of that person  
13 shall be surrendered to the court. The court shall immediately  
14 forward the surrendered license and a certificate of conviction  
15 to the secretary of state. A suspension ordered under this sub-  
16 section shall be in addition to any other suspension of the  
17 person's operator or chauffeur license.

18 (4) A LEGAL PRESUMPTION THAT A PERSON LESS THAN 21 YEARS OF  
19 AGE HAS CONSUMED OR POSSESSED ALCOHOLIC LIQUOR SHALL BE MADE BY  
20 THE COURT IF A PRELIMINARY BREATH TEST OR OTHER ACCEPTABLE BLOOD  
21 ALCOHOL TEST INDICATES A READING OF ANY ALCOHOL CONTENT OVER 0%.  
22 THE ALLEGED VIOLATOR MAY PRODUCE EVIDENCE TO THE COURT TO OVER-  
23 COME THIS PRESUMPTION.

24 (5) A LAW ENFORCEMENT AGENCY SHALL NOTIFY THE PARENT OR PAR-  
25 ENTS, CUSTODIAN, OR GUARDIAN OF THE PERSON FOUND TO HAVE VIOLATED  
26 SUBSECTION (1) IF THE PERSON IS LESS THAN 18 YEARS OF AGE. IF  
27 THE PERSON IS ATTENDING ELEMENTARY OR SECONDARY SCHOOL, THE LAW

1 ENFORCEMENT AGENCY SHALL NOTIFY THE PRINCIPAL OF THE SCHOOL THAT  
2 THE PERSON IS ATTENDING.

3       (6) IMMEDIATELY UPON THE ENTRY OF A FINDING OF A CIVIL  
4 INFRACTION DETERMINATION, A PROBATE COURT ORDER OF DISPOSITION  
5 FOR A VIOLATION OF SUBSECTION (1), OR THE ENTRY OF A DEFAULT  
6 JUDGMENT, THE COURT SHALL CONSIDER ALL PRIOR DETERMINATIONS OF A  
7 CIVIL INFRACTION, CONVICTIONS, OR PROBATE COURT ORDERS OF DISPO-  
8 SITION OF SUBSECTION (1), OR A LOCAL ORDINANCE OR LAW OF ANOTHER  
9 STATE SUBSTANTIALLY CORRESPONDING TO SUBSECTION (1), AND MAY  
10 IMPOSE THE FOLLOWING SANCTIONS:

11       (A) IF THE COURT FINDS THAT THE PERSON HAS NO SUCH PRIOR  
12 DETERMINATIONS OF A CIVIL INFRACTION, CONVICTION, OR PROBATE  
13 COURT ORDER OF DISPOSITION, THE COURT SHALL ORDER THE SECRETARY  
14 OF STATE TO SUSPEND THE OPERATOR'S OR CHAUFFEUR'S LICENSE OF THE  
15 PERSON FOR A PERIOD OF 90 DAYS. THE COURT SHALL ORDER THE SECRE-  
16 TARY OF STATE TO REDUCE THE SUSPENSION TO 45 DAYS UPON THE COM-  
17 PLETION OF THE SUBSTANCE ABUSE PROGRAM ORDERED UNDER  
18 SUBSECTION (1). IN THE CASE OF A PERSON WHO DOES NOT POSSESS AN  
19 OPERATOR OR CHAUFFEUR LICENSE, THE SECRETARY OF STATE SHALL DENY  
20 THE APPLICATION FOR AN OPERATOR OR CHAUFFEUR LICENSE FOR THE  
21 APPLICABLE SUSPENSION PERIOD.

22       (B) IF THE COURT FINDS THAT THE PERSON HAS 1 SUCH PRIOR  
23 DETERMINATION OF A CIVIL INFRACTION, CONVICTION, OR PROBATE COURT  
24 ORDER OF DISPOSITION, THE COURT SHALL ORDER THE SECRETARY OF  
25 STATE TO SUSPEND THE OPERATOR'S OR CHAUFFEUR'S LICENSE OF THE  
26 PERSON FOR A PERIOD OF NOT LESS THAN 180 DAYS.



1 (C) IF THE COURT FINDS THAT THE PERSON HAS 2 OR MORE SUCH  
2 PRIOR DETERMINATIONS OF A CIVIL INFRACTION, CONVICTION, OR  
3 PROBATE COURT ORDER OF DISPOSITION, THE COURT SHALL ORDER THE  
4 SECRETARY OF STATE TO SUSPEND THE OPERATOR'S OR CHAUFFEUR'S  
5 LICENSE OF THE PERSON FOR A PERIOD OF 1 YEAR.

6 (7) UPON THE ENTRY OF A DEFAULT JUDGMENT, THE COURT SHALL  
7 PROCEED IN ACCORDANCE WITH THE PROCEDURES SET FORTH IN  
8 SECTION 321A OF ACT NO. 300 OF THE PUBLIC ACTS OF 1949, BEING  
9 SECTION 257.321A OF THE MICHIGAN COMPILED LAWS.

10 (8) IMMEDIATELY UPON THE ENTRY OF A COURT-ORDERED SANCTION  
11 PURSUANT TO SUBSECTION (6), THE COURT SHALL ORDER THE PERSON  
12 FOUND RESPONSIBLE FOR THE VIOLATION TO SURRENDER TO THE COURT HIS  
13 OR HER OPERATOR'S OR CHAUFFEUR'S LICENSE. THE COURT SHALL IMME-  
14 DIATELY FORWARD A NOTICE OF COURT-ORDERED LICENSE SANCTIONS TO  
15 THE SECRETARY OF STATE. IF THE LICENSE IS NOT FORWARDED TO THE  
16 SECRETARY OF STATE, AN EXPLANATION OF THE REASON WHY THE LICENSE  
17 IS ABSENT SHALL BE ATTACHED. IF THE FINDING IS REVIEWED BY THE  
18 CIRCUIT COURT, THE COURT MAY, EX PARTE, ORDER THE SECRETARY OF  
19 STATE TO RESCIND THE SUSPENSION ISSUED PURSUANT TO THIS SECTION.  
20 IMMEDIATELY FOLLOWING IMPOSITION OF THE SANCTION, THE COURT SHALL  
21 FORWARD A NOTICE TO THE SECRETARY OF STATE INDICATING THE SANC-  
22 TION IMPOSED.

23 (9) ~~(4)~~ This section shall not be construed to prohibit a  
24 person less than 21 years of age from possessing alcoholic liquor  
25 during regular working hours and in the course of his or her  
26 employment if employed by a person licensed by this act, by the  
27 ~~liquor control~~ commission, or by an agent of the ~~liquor~~

1 ~~control~~ commission, if the alcoholic liquor is not possessed for  
2 his or her personal consumption.

3 (10) ~~(5)~~ This section shall not be construed to limit the  
4 civil or criminal liability of the vendor or the vendor's clerk,  
5 servant, agent, or employee for a violation of this act.

6 (11) ~~(6)~~ The consumption of alcoholic liquor by a person  
7 ~~under~~ LESS THAN 21 years of age who is enrolled in a course  
8 offered by an accredited post secondary educational institution  
9 in an academic building of the institution under the supervision  
10 of a faculty member shall not be prohibited by this act if the  
11 purpose OF THE CONSUMPTION is solely educational and IS a neces-  
12 sary ingredient of the course.

13 Sec. 33c. (1) A sheriff or deputy sheriff; village or town-  
14 ship marshal; an officer or member of a village, township, or  
15 city police department; an officer of the department of state  
16 police; or an inspector of the commission who witnesses a viola-  
17 tion of section 33b or a local ordinance corresponding to that  
18 section, ~~for which violation~~ IS A CIVIL INFRACTION FOR WHICH  
19 a civil fine, LICENSE SUSPENSION, OR OTHER SANCTION is pre-  
20 scribed, may stop and detain the person for purposes of obtaining  
21 satisfactory identification, seizing illegally possessed alco-  
22 holic ~~beverages~~ LIQUOR, and issuing an appearance ticket.

23 (2) As used in this section, "appearance ticket" means a  
24 complaint or written notice, issued and subscribed by a law  
25 enforcement officer OF THE TYPE DESCRIBED IN SUBSECTION (1) or  
26 inspector of the commission, directing a designated person to  
27 appear in a ~~designated district or municipal~~ DESIGNATED court at

1 a designated time in connection with the alleged ~~violation~~  
2 CIVIL INFRACTION for which a civil fine, LICENSE SUSPENSION, OR  
3 OTHER SANCTION is prescribed. The appearance ticket shall con-  
4 sist of the following parts:

5 (a) The original which shall be a complaint or notice to  
6 appear by the officer and filed with the court.

7 (b) The first copy which shall be the abstract of court  
8 record.

9 (c) The second copy which shall be delivered to the alleged  
10 violator.

11 (d) The third copy which shall be retained by the law  
12 enforcement agency.

13 (3) A judge may accept an admission by the defendant of the  
14 allegations of an appearance ticket and the judge shall then  
15 ~~direct the~~ IMPOSE A civil ~~finer~~ FINE, LICENSE SUSPENSION, OR  
16 OTHER SANCTION as ~~prescribed~~ FURTHER AUTHORIZED by section  
17 33b. If the defendant denies the allegations of the appearance  
18 ticket, the judge shall then set a date for trial OR HEARING. If  
19 the defendant fails to appear on the date specified on the  
20 appearance ticket, the judge shall enter a default judgment  
21 against that defendant AND MAY IMPOSE A CIVIL FINE, LICENSE SUS-  
22 PENSION, OR OTHER SANCTION AUTHORIZED BY SECTION 33B.

23 Section 2. This amendatory act shall not take effect unless  
24 Senate Bill No. \_\_\_\_ or House Bill No. 5924 (request  
25 no. 05982'92 a) of the 86th Legislature is enacted into law.