



**House
Legislative
Analysis
Section**

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UNDERAGE DRINKING: PENALTIES

House Bills 4323 and 4324 as passed by
the House
Second Analysis (9-15-93)

Sponsor: Rep. Dianne Byrum
Committee: Liquor Control

THE APPARENT PROBLEM:

The legal drinking age in Michigan is 21. The Liquor Control Act contains penalties for licensees, such as bars, bowling alleys, restaurants, supermarkets, and package stores, who sell or furnish alcohol to people under that age and penalties for young people under the legal drinking age who purchase, possess, and consume alcohol. Licensees complain, however, that enforcement is unequal. Penalties against licensees, which can include license suspensions and revocations, as well as civil fines and criminal penalties, are far more severe than those facing underage drinkers. Underage drinkers face only small civil fines (like traffic tickets) and possibly required attendance at substance abuse programs. These penalties are considered too low to be effective deterrents and low enough to make enforcement unprofitable and not worth the effort. Licensees complain, indeed, that underage drinkers routinely escape punishment while duped licensees face serious sanctions. What is even more galling to licensees, some young people who violate the underage drinking law escape prosecution by participating in "sting" operations for law enforcement agencies. Legislation has been proposed for several years purporting to level the playing field between licensees and underage drinkers and to discourage young people from underage drinking by stiffening penalties.

THE CONTENT OF THE BILLS:

House Bill 4324 would amend the Liquor Control Act (MCL 436.33 et al.) to alter the penalties for conduct related to the purchase, possession, and consumption of alcohol by a person under the legal drinking age of 21. The bill would permit the suspension or restriction of a driver's license for repeat offenders of underage drinking. It also would require, with some exceptions, that if a licensee was to be charged for an underage drinking violation then the underage drinker also would have to be charged. House Bill 4323 would make

complementary amendments to a section of the Michigan Vehicle Code (MCL 257.319 et al.) dealing with license suspensions and would create a special fund to help pay costs courts would face in dealing with underage drinking violations. The two bills are tie-barred to one another and would take effect April 1, 1994.

House Bill 4324 would do the following:

Licensee Protections

** From the bill's effective date until April 1, 1997, a licensee, such as a bar or package store, could not be charged with a violation involving selling or furnishing alcohol to an underage person, unless enforcement action was also taken against the underage person and, if applicable, the person of legal drinking age who sold or furnished the alcohol to the underage person. This would apply when the enforcing agency was the state police or a local police agency. In cases where the enforcing agency was the Liquor Control Commission, the LCC would have to recommend to a local enforcement agency that action be taken. These provisions would not apply if the underage person was not alive or was not present in the state when charges were brought against a licensee. They also would not apply if the violation was the result of undercover operations in which an underage person purchased or received alcohol either: a) under the direction of the person's employer and with the prior approval of the local prosecutor's office as part of an employer-sponsored internal enforcement operation; or b) under the direction of the state police, the LCC, or local police as part of an enforcement action where the initial or contemporaneous purchase or receipt of alcohol was under law enforcement direction and part of the operation.

** Further, a licensee or an employee of a on-premises licensee (such as a bar or restaurant)

House Bills 4323 and 4324 (9-15-93)

could not be charged with a violation of underage drinking laws unless both a) the licensee or employee knew or should reasonably have known with the exercise of due diligence that an underage person possessed or consumed alcohol on the licensed premises; and b) the licensee or employee failed to take immediate corrective action.

** Additionally, the LCC would be prohibited from taking action against a licensee for a violation that was the result of an undercover operation in which the underage person purchased or received alcohol under the direction of the licensee with the prior approval of the local prosecutor's office as part of an employer-sponsored internal enforcement action.

Penalties For Underage Drinkers

** Civil fines would be increased for an underage person who purchased, attempted to purchase, consumed, or attempted to consume alcohol in a licensed premise or who possessed or attempted to possess alcohol. (The "attempt" language is not in the act currently; it would be added by the bill.) The maximum fines would be increased from \$25 to \$100 for a first violation; from \$50 to \$200 for a second violation; and from \$100 to \$500 for third and subsequent violations.

** A peace officer who had reasonable cause to believe an underage person had consumed alcohol could require the person to submit to a preliminary chemical breath analysis. A legal presumption would be made by the court that the person had consumed or possessed alcohol if the test indicated a reading of 0.2 percent or more.

** Courts could order the performance of community service for second and subsequent violations.

** Courts could order violators to undergo substance abuse screening and assessment at their own expense in order to determine whether the person was likely to benefit from rehabilitative services, including alcohol or drug education programs or alcohol or drug treatment programs.

** The driver's license would be suspended or restricted in cases where an underage person had one or more prior violations. The court would order the secretary of state to suspend a license for up to 180 days, but could order the issuance of a restricted license after the first 30 days of

suspension for a person with one prior violation and after the first 60 days of suspension for a person with two or more prior violations. The bill would require the court, in imposing its sanctions, to consider all prior underage drinking violations, including violations of local ordinances and similar laws in other states. (If a person did not have a license, the secretary of state would deny the application of the person for a license for the applicable suspension period.)

A court would not be allowed to order a restricted license unless the affected person stated under oath, and the court found based on the record in open court, that the person was unable to take public transportation to work, substance abuse programs, or school, and did not have anyone who could provide the transportation. The court order and the restricted license would indicate the work location of the affected person, the approved route or routes and the permitted times of travel. The restricted license would only permit the person to drive to and from work and in the course of employment, to and from a treatment program, to and from the court probation department, to and from community service, and to and from school. (The suspension or restriction could be rescinded pursuant to a circuit court review.)

** Law enforcement agencies would be required to notify the parents, guardians, or custodians, when they were reasonably ascertainable, of alleged violations of underage consumption, possession, or purchase (or attempts) of alcohol by those under 18 years of age. The notice would have to be made in person, by telephone, or by first class mail no more than 48 hours after the agency's determination of an alleged violation.

** A person under 21, however, would not be charged with a violation if he or she participated in an undercover operation where either a) alcohol was purchased or received under the direction of an employer and with the approval of a local prosecutor as part of an employer-sponsored internal enforcement action; or b) alcohol was purchased or received under the direction of the state police, LCC, or a local police agency as part of an enforcement action.

Other Provisions

** A non-licensee who illegally sold or furnished alcohol to an underage drinker would be fined not

less than \$200 and not more than \$1,000 and could be sentenced to up to 90 days' imprisonment or ordered to perform community service.

**** The Liquor Control Commission would have to provide an annual written report to the state police on the number of actions they had heard involving violations of selling or furnishing alcohol to underage drinkers (and to people who were visibly intoxicated). The report would include the disposition of each action and contain figures regarding decoy operations, off-premises violations, on-premises violations, and repeat offenses within the previous three years.**

House Bill 4323 would place the following provisions in the vehicle code.

**** Upon receipt of a civil infraction determination or probate court order of disposition for an underage drinking violation, the secretary of state would be required to suspend the operator's or chauffeur's license, and if applicable issue a restricted license as ordered by the court. In the case of a person who did not possess a license, the secretary of state would deny the application for a license for the applicable suspension period.**

**** A person cited for or determined to be responsible for an underage drinking violation also would have an operator's or chauffeur's license suspended if he or she first failed to answer a citation or a notice to appear in court or failed to comply with an order or judgment of the court and then failed to respond to a subsequent notice from the court giving them 7 days to appear or 14 days to comply.**

**** Provisions currently found in the liquor law regarding an underage person transporting alcohol in a motor vehicle would be placed instead in the vehicle code. (House Bill 4324 would remove them from the liquor law.)**

**** An Underage Drinking Case Information Management Fund would be created to help defray the costs courts would face in complying with requirements for the timely management and reporting to the Department of State of information about cases involving underage drinking violations. Money would be distributed to district courts and probate courts based on their share of the total number of underage drinking violations. The distribution would be made by the State Court**

Administrative Office at the direction of the state supreme court and upon confirmation of the amounts available by the Department of Treasury. The SCAO would be reimbursed from the fund for its administrative costs, including judicial and staff training, on-site management assistance, forms development and conversion, and software development and conversion. Revenue would come by directing to the fund \$30 from the \$125 fee that would be charged for the reinstatement of a license lost due to an underage drinking violation, with the remainder going to the Department of State. (The \$125 fee for reinstating a license lost for other offenses would, as now, be divided between the department and two funds related to anti-drunk driving activities.)

BACKGROUND INFORMATION:

The Liquor Control Act prohibits the sale of alcohol to people who are less than 21 years old, and specifically prohibits (a) retail licensees from selling, furnishing, or giving ("directly, individually, or by a clerk, agent, or servant") alcohol to minors and (b) minors from buying, possessing or consuming (in a licensed premise) alcohol. Someone who knowingly sells or furnishes alcohol to an underage person (or who fails to try to find out whether the buyer is of legal age) 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 alcohol 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 alcohol 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 an underage person buys, has, or drinks (in a licensed establishment) alcohol, 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. Underage persons 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.

FISCAL IMPLICATIONS:

There is no specific information at present. House Bill 4323 would create a new fund for the purposes of defraying the additional costs to district and probate courts anticipated as a result of the passage of the legislation. Money would come from the fee charged for reinstating a license suspended for underage drinking: \$30 of the \$125 fee would go to the special fund for distribution to the courts.

ARGUMENTS:

For:

The bills' aim is to try to reduce underage drinking. If the state is serious about this, it needs to increase the likelihood violators will be punished and increase the penalties to make them more of a deterrent. The bills do this in several ways. They require that if a licensee is to be cited for a violation of the law, the underage drinker must be also. This puts enforcement on a fairer footing as far as licensees are concerned, and makes it more likely young people will be cited for violations. As it is now, licensees face the potential loss of livelihood for serving underage drinkers while the young people face small penalties when they are cited at all. The maximum civil fines for underage drinkers are increased four- or five-fold. Community service could be required. But most significantly, a young person's driver's license could be suspended for second and subsequent violations (or withheld if the underage drinker did not yet hold a driver's license). This is more likely to get a young person's attention.

Underage drinking is a serious problem, as is teenage drunk driving. It is said to be a leading cause of death for teenagers and people in their 20's. Information from the Department of State and the state police shows that 5,569 drivers between the ages of 18 and 20 were charged with operating under the influence during 1989. This suggests underage drinking is widespread. There are now few disincentives for teenagers because the

penalties are so low (when enforced) and great social pressure to consume alcohol both from peers and advertising. There is no penalty now, for example, for attempting to purchase alcohol and so nothing to stop teenagers from going from store to store or bar or bar trying to get served. They can only get in trouble if they succeed in obtaining alcohol (and get caught and get cited). The bills add "attempts" to the list of violations to try to get at this problem. The legislation also would specifically permit licensees to run their own undercover operations, with the approval of local prosecutors, to test the behavior of employees.

Against:

There are several problems with using the driver's license as an enforcement tool in this way. First, there is evidence that shows license suspensions are not effective in deterring people from driving. Instead, people with suspended or revoked licenses continue to drive without licenses (although perhaps more cautiously). One possible consequence of this is that some people develop the attitude that being licensed is not necessary if one is careful; reportedly, many drivers who lose their licenses do not apply for new ones when their penalty time is up. Second, some people argue that driver's licenses should not be suspended for offenses unrelated to driving or not involving motor vehicles. Under these bills, a 20-year-old who illegally possessed or consumed alcohol, but who did not drive under the influence or even use a vehicle at all, could lose his or her license. Will driver's license suspensions be used to deter other crimes, such as shoplifting or breaking-and-entering? This trend is disturbing. If the driver's license is used as an enforcement tool for routine crimes or civil infractions (or even such "offenses" as dropping out of school, which is not against the law at all), won't it lose its force as a weapon against drunk driving?

Response:

The bills would allow the suspension of a driver's license only for a second or subsequent offense. And a restricted license would be available to allow a person to get to and from work or school or to certain other activities (although not just to drive around aimlessly). Besides, the driver's license is already used as an enforcement tool. A license can be suspended now if an underage person uses fake identification to buy alcohol (regardless of whether a car is involved or even whether the ID is a driver's license). It can also be suspended for driving away from a self-service gas station without

paying. In some states, the driver's license has also been used to discourage school dropouts.

Against:

While they have many good provisions, the bills could have the effect of weakening enforcement efforts in some instances. For example, state police representatives are concerned that they will not be able to use young people they apprehend illegally purchasing alcohol in an immediate undercover operation. The legislation would appear to require that a young person caught illegally purchasing alcohol would have to be charged with the violation. The exception for undercover operations would apply to alcohol illegally purchased as part of an undercover operation. The state police say they often catch an underage person with illegally purchased alcohol and, instead of citing them for the offense, send them back into the establishment immediately as part of an undercover operation to catch the licensee or the employee selling illegally. While there may be resentment that young people get off in such circumstances, the question becomes, "which is the greater evil?" If the police's aim is to get at those establishments that routinely sell to underage persons (because it is profitable to do so), and particularly to youngsters they know, then it is a small price to pay to let a young person go unpunished to combat the greater evil. As written, the bill would tie the hands of the police.

LCC officials are concerned about the new standards for charging licensees with violations of underage drinking provisions or dram shop provisions. House Bill 4324 would require that two separate standards be met: 1) that the licensee or employee had actual knowledge or should have reasonably known that a person possessed or consumed alcohol on licensed premises; and 2) that the licensee or employee failed to take immediate corrective action. This appears to set a higher standard than exists now and could make enforcement more difficult.

A third concern is the general tie-in between charging both licensees and underage violators. It does not seem sensible to say that one clear violation of the law cannot be prosecuted because another one is not. Law enforcement officials ought to have discretion over what charges to bring. Besides, it could make cooperation by underage drinkers and their older accomplices more difficult.

Response:

Undercover operations by police would still be possible if they used cadets or other underage persons specifically for that purpose. Those used in an undercover operation would not have to be charged. But, it is true, the bills do not intend to allow the police to forgive an offense on the spot in order to use a young person to entrap a licensee. (Think of the incentive the underage person has to succeed in such circumstances.) Licensees are concerned about aggressive sting operations generally, where older looking young people are used in an effort to entrap them. This is not fair to bar and store operators. As for other enforcement standards, it is possible now for well-meaning bar owners to be victimized by devious underage drinkers (sometimes in crowds with legal drinkers) and suffer large penalties as a result while the underage drinkers escape. The bill makes it clear that licensees or employees should not be charged if they did not know or could not reasonably have known someone underage was drinking. And it specifies that if bars and bowling alleys find someone drinking illegally, they are responsible if they allow it to continue.

Against:

While this bill aims at protecting licensed establishments from devious underage drinkers, it should be noted that licensees are already somewhat protected if they ask potential buyers for identification. The law says that proof that a licensee demanded and was shown proper identification is a defense against charges of serving an underage person. Further, even if provided with what appears to be proof that a person is legally of age to buy alcohol, the licensee is still not obligated to sell it if doubts exist as to the age of the customer. Licensees who are diligent in asking for proof of age and identity should not fear enforcement actions.

Response:

As a practical matter, it is not easy for a licensee to prove that identification was properly requested. If bogus identification is offered a licensee but does not turn up when an underage person is caught with alcohol, there is no evidence to substantiate the licensee's claim. Even if false identification is later found on the underage purchase, the fact remains that the licensee has sold to an underage person; even if identification was shown, that violation exists. While the identification defense may affect the penalty imposed, it is not likely to excuse a licensee from the violation.

Against:

Some people have pointed out that young people who drink legally in Canada and then return to Michigan would, under this proposal, be presumed to have violated this state's underage drinking laws if a breath analysis test indicated a reading of 0.2 or more.

Response:

It ought to be remembered that what is at issue here is the effective and fair enforcement of the state's drinking age laws and, ultimately, a reduction in the harm caused by underage drinking. It should be expected that the law would be applied reasonably in most cases.