

MICHIGAN LIQUOR CONTROL CODE OF 1998 (EXCERPT)
Act 58 of 1998

436.1701 Selling or furnishing alcoholic liquor to minor; failure to make diligent inquiry; violation as misdemeanor; penalty; signs; consumption of alcoholic liquor as cause of death or injury; felony; enforcement against licensee; consent of parent or guardian in undercover operation; defense in action for violation; report; use of security identification device; definitions.

Sec. 701.

(1) A person shall not sell or furnish alcoholic liquor to a minor. Except as otherwise provided in subsection (2) and subject to subsections (4), (5), and (6), a person who knowingly sells or furnishes alcoholic liquor to a minor, or who fails to make diligent inquiry as to whether the individual is a minor, is guilty of a misdemeanor. A retail licensee or a retail licensee's clerk, agent, or employee who violates this subsection shall be punished in the manner provided for licensees in section 909 except that if the violation is the result of an undercover operation in which the minor received alcoholic liquor under the direction of the state police, the commission, or a local police agency as part of an enforcement action, the retail licensee's clerk, agent, or employee is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than \$100.00. Except as otherwise provided in subsection (2), an individual who is not a retail licensee or a retail licensee's clerk, agent, or employee and who violates this subsection is guilty of a misdemeanor punishable by a fine of not more than \$1,000.00 and imprisonment for not more than 60 days for a first offense, a fine of not more than \$2,500.00 and imprisonment for not more than 90 days for a second or subsequent offense, and may be ordered to perform community service. A suitable sign describing the content of this section and the penalties for its violation must be posted in a conspicuous place in each room where alcoholic liquor is sold. The commission shall approve and furnish a sign under this section.

(2) An individual who is not a retail licensee or the retail licensee's clerk, agent, or employee and who violates subsection (1) is guilty of a felony, punishable by imprisonment for not more than 10 years or a fine of not more than \$5,000.00, or both, if the subsequent consumption of the alcoholic liquor by the minor is a direct and substantial cause of the minor's death or an accidental injury that causes the minor's death.

(3) If a violation occurs in an establishment that is licensed by the commission for consumption of alcoholic liquor on the licensed premises, a person who is a licensee or the clerk, agent, or employee of a licensee must not be charged with a violation of subsection (1) or section 801(1) unless the licensee or the clerk, agent, or employee of the licensee knew or should have reasonably known with the exercise of due diligence that a minor possessed or consumed alcoholic liquor on the licensed premises and the licensee or clerk, agent, or employee of the licensee failed to take immediate corrective action.

(4) If the enforcing agency involved in the violation is the state police or a local police agency, a licensee must not be charged with a violation of subsection (1) or section 801(1) unless all of the following occur, if applicable:

(a) Enforcement action is taken against the minor who purchased or attempted to purchase, consumed or attempted to consume, or possessed or attempted to possess alcoholic liquor.

(b) Enforcement action is taken under this section against the individual 21 years of age or older who is not the retail licensee or the retail licensee's clerk, agent, or employee who sold or furnished the alcoholic liquor to the minor.

(c) Enforcement action under this section is taken against the clerk, agent, or employee who directly sold or furnished alcoholic liquor to the minor.

(5) If the enforcing agency is the commission and an appearance ticket or civil infraction citation has not been issued, then the commission shall recommend to a local law enforcement agency that enforcement action be taken against a violator of this section or section 703 who is not a licensee. However, subsection (4) does not apply if the minor against whom enforcement action is taken under section 703, the clerk, agent, or employee of the licensee who directly sold or furnished alcoholic liquor to the minor, or the individual 21 years of age or older who sold or furnished alcoholic liquor to the minor is not alive or is not present in this state at the time the licensee is charged. Subsection (4)(a) does not apply under either of the following circumstances:

(a) The violation of subsection (1) is the result of an undercover operation in which the minor purchased or received alcoholic liquor 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 action.

(b) The violation of subsection (1) is the result of an undercover operation in which the minor purchased or received alcoholic liquor under the direction of the state police, the commission, or a local police agency as part of an enforcement action.

(6) Any initial or contemporaneous purchase or receipt of alcoholic liquor by the minor under subsection (5)(a) or (b) must have been under the direction of the state police, the commission, or the local police agency and must have been part of the undercover operation.

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

(8) In an action for the violation of this section, proof that the defendant or the defendant's agent or employee demanded and was shown, before furnishing alcoholic liquor to a minor, a motor vehicle operator's or chauffeur's license, a military identification card, or other bona fide documentary evidence of the age and identity of that person, is a defense to an action brought under this section.

(9) The commission shall provide, on an annual basis, a written report to the department of state police as to the number of actions heard by the commission involving violations of this section and section 801(1). The commission shall include in the report the disposition of each action and figures representing all of the following categories:

(a) Decoy operations.

(b) Off-premises violations.

(c) On-premises violations.

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

(10) Subsection (11)(b)(ii) does not impose a duty or obligation on the secretary of state that is not otherwise required by law.

(11) As used in this section:

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

(b) "Diligent inquiry" means a diligent good-faith effort to determine the age of an individual, which includes at least 1 of the following:

(i) An examination of an official Michigan operator's or chauffeur's license, an official Michigan personal identification card, a military identification card, or any other bona fide picture identification that establishes the identity and age of the individual.

(ii) Use of a secure identity verification device if all of the following conditions are met:

(A) The electronic scan of a biometric of the individual is referenced against any form of picture identification described in subparagraph (i).

(B) The authenticity of the picture identification was previously verified by an electronic authentication process.

(C) The identity of the individual was previously verified through a commercially available knowledge-based electronic authentication process.

(D) The authenticated picture identification was securely linked to biometrics contemporaneously collected from the individual.

(c) "Retail licensee" means a person licensed to sell alcoholic liquor at retail for consumption on or off the licensed premises.

(d) "Secure identity verification device" means a commercial device that instantly verifies the identity and age of an individual by an electronic scan of a biometric of the individual.

History: 1998, Act 58, Imd. Eff. Apr. 14, 1998 ;-- Am. 2002, Act 725, Imd. Eff. Dec. 30, 2002 ;-- Am. 2006, Act 682, Imd. Eff. Jan. 10, 2007 ;-- Am. 2010, Act 266, Eff. June 30, 2011 ;-- Am. 2019, Act 131, Imd. Eff. Nov. 21, 2019 ;-- Am. 2020, Act 78, Imd. Eff. Apr. 2, 2020 ;-- Am. 2020, Act 377, Eff. Oct. 1, 2021