



**House
Legislative
Analysis
Section**

House Office Building, 9 South
Lansing, Michigan 48909
Phone: 517/373-6466

**FURNISHING ALCOHOL TO MINOR:
APPLY PENALTY IF ANY DEATH
OCCURS**

**House Bill 4436 as introduced
First Analysis (2-26-02)**

**Sponsor: Rep. Rose Bogardus
Committee: Regulatory Reform**

THE APPARENT PROBLEM:

Even though Michigan has taken a zero tolerance policy regarding the consumption of alcohol by minors, underage drinkers still find it easy to acquire alcohol. All too often, friends and acquaintances of a minor act as a main supply source of alcohol, either by buying beer and liquor for them, or by including them in activities at which alcohol is available. At times, even total strangers may yield to the pleas of an underage person to purchase a six-pack of beer or a bottle of spirits (usually for a small fee). This is especially problematic in college towns.

In an effort to curb sales of, and access to, alcohol by underage persons, Michigan law makes it a crime for liquor licensees and their employees or for any person to sell or furnish alcohol to a minor. (See *Background Information* for detailed information.) If a minor dies as a result of alcohol consumption, a person who supplied the alcohol to that minor could be convicted of a felony offense with a substantial prison sentence. Deaths to minors caused by alcohol include deaths from alcohol poisoning, traffic accidents (either driving a car while intoxicated or crossing the street while intoxicated), and other accidents (falls, drownings, etc.).

Unfortunately, sometimes it is not the minor who dies as a result of the illicit alcohol consumption; it is an innocent person. According to statistics compiled by the Michigan State Police, in the year 2,000, 814 of the 1,874 traffic crashes that involved drivers under the age of 21 who were under the influence of alcohol resulted in injuries to one or more people in the crash; 166 of these injuries were to people other than the driver. Of the 45 fatalities, 32 were to the driver, but 13 of those killed were other persons. In these cases, the person who supplied the minor with alcohol can only be charged with a misdemeanor offense, for though the minor caused the fatal accident, the felony charge is reserved for cases involving the minor's death.

In one such case a teenager was killed in a car crash. The driver of the other car was also underage, and was intoxicated – a result of being at a party in which alcohol was served to all present. Since the intoxicated driver lived, the person giving the party could only be charged with a misdemeanor - \$1,000 in fines with a discretionary jail sentence of up to 60 days.

It has been suggested that the law be expanded to allow a felony charge to be brought against a person who supplies underage drinkers with alcohol if such an action results in the death of any person, not just the death of the minor who consumed the alcohol.

THE CONTENT OF THE BILL:

Under the Michigan Liquor Control Code, it is a felony to sell or furnish alcohol to a minor if the consumption of the alcohol is a direct and substantial cause of the minor's death or an accidental injury that causes the minor's death. The provision applies only to a person who is not licensed as a retailer by the Liquor Control Commission or who is not employed by a licensed retailer. "Licensed retailers" are persons licensed to sell alcoholic beverages for consumption on or off the licensed premises. The penalty for a violation is imprisonment for up to 10 years, or a fine of not more than \$5,000, or both.

The bill would expand this provision to include the death of any person. Therefore, it would be a felony to furnish alcohol to a minor if the consumption of the alcohol by the minor was the direct and substantial cause of the death of any person or an accidental injury that caused the death of a person.

MCL 436.1701

House Bill 4436 (2-26-02)

BACKGROUND INFORMATION:

Penalties for selling or furnishing alcohol to minors. The Michigan Liquor Control Code establishes criminal penalties for prohibited acts. Under the code, a person who is not licensed by the Michigan Liquor Control Commission (a *nonlicensee*) is guilty of a misdemeanor if he or she knowingly sells or furnishes alcohol to a minor. The penalty is a mandatory fine of \$1,000 and the person may be sentenced to 60 days imprisonment. A second or subsequent offense results in a mandatory \$2,500 fine and up to 90 days imprisonment; in addition, the person may be ordered to perform community service. [MCL 436.1701(1)]

If the subsequent consumption of the alcohol by the minor is a direct and substantial cause of that minor's death or an accidental injury that causes the minor's death, the person who furnished or sold the alcohol to the minor is guilty of a felony punishable by imprisonment for up to 10 years, a fine of not more than \$5,000, or both. [MCL 436.1701(2)]

A person who performs any act for which a license is required (e.g., selling beer from a keg at a party) is guilty of a felony punishable by imprisonment for not more than one year, a fine of not more than \$1,000, or both. However, this section of law states that it is the legislature's intent that a court, "in imposing punishment under this section, should discriminate between casual or slight violations and habitual sales of alcoholic liquor or attempts to commercialize violations of this act . . ." [MCL 436.1909(3)(4)]

In addition, the liquor code establishes three levels of liability for a *licensee* who unlawfully sells or furnishes alcohol to a minor:

1) Administrative sanctions. After a hearing, the Michigan Liquor Control Commission can suspend or revoke any license for a violation of the prohibition against selling or furnishing alcohol to a minor. In addition to or in lieu of license sanctions, the commission can levy a fine of not more than \$1,000 for each violation. If a licensee has been found to have sold or furnished alcohol to a minor on three separate occasions within a 24-month period, the commission must suspend or revoke the liquor license. [MCL 436.1903 (1)]

2) Criminal penalties. Any violation of the liquor code, including selling or furnishing alcohol to a minor, is a misdemeanor punishable by up to six months imprisonment, a fine of not more than \$500, or both. [MCL 436.1909(2)] However, this

provision states that it is the legislature's intent that a court, "in imposing punishment under this section, should discriminate between casual or slight violations and habitual sales of alcoholic liquor or attempts to commercialize violations of this act . . ." [MCL 436.1909(4)]

3) Civil liability. Also known as the dramshop law, this provision of the liquor code provides that a person who suffers damage or who is personally injured by a minor who had been unlawfully sold or furnished alcohol by a licensee (or his or her employee) can bring a civil action against a licensee for actual damages if the unlawful sale was proven to be a proximate cause of the damage, injury, or death. In cases involving a death, the spouse, child, parent, or guardian of the deceased can bring the action in the name of the deceased. [436.1801(3)]

Traffic crash statistics. According to the Michigan State Police, in the year 2000, there were 1,814 traffic crashes involving drivers under the age of 21 who were under the influence of alcohol. Forty-five of the crashes were fatal; 32 were fatal to the driver, 13 to someone else. Of the total number of crashes, 814 caused injury to one or more persons; 648 to the driver, 166 to others. Five of these injury crashes involved more than one driver under 21 and using alcohol (drivers of both vehicles).

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill would likely have a negligible fiscal impact. (2-21-02)

ARGUMENTS:

For:

Despite Michigan's tough stance of zero tolerance for underage drinking, deaths and injuries due to consumption of alcohol by minors continue to mount. Just within the past few years, several teens have died as a result of alcohol poisoning, and several others died in falls in which intoxication played a role. And, according to statistics collected and compiled by the Michigan State Police, the year 2000 saw 45 deaths in the state caused by minors driving under the influence. Thirteen of those deaths were to people other than the driver. These were preventable deaths.

Liquor stores, bars, and restaurants have at times been responsible for sales of alcohol to minors. However, through enforcement actions on the part of

the Liquor Control Commission and increased training of staff by liquor licensees (both to know the legal and administrative penalties for underage sales and to recognize fake IDs), sales to minors by licensees have been decreasing. It would seem, therefore, that the primary supply source of alcohol to minors is from friends, family members, acquaintances, and even strangers.

For too long, drinking by youths has been seen as a rite of passage. This perception is slowly changing as statistics reveal the role alcohol use by minors plays in developing lifelong alcohol dependency, lower grades in school, unplanned pregnancies, crime, injuries, and deaths. It is terrible to think of the young lives that have been altered forever from the consequences of early drinking. It is even sadder to think of those teens and adults who have lived responsibly, but have been killed or injured by those minors who have been drinking.

Of course, each person must be responsible for his or her own actions, and there are laws to punish those underage drinkers who kill or injure someone else in a traffic accident or through the commission of a violent crime. Michigan law also punishes the person who supplied alcohol to a minor in those cases in which the minor dies as a result of consuming the alcohol. But, it is obvious that minors under the influence often injure others. It is a logical extension, therefore, that if the intoxicated minor subsequently causes the death of another person – whether by accident, such as a traffic crash, or during the commission of a crime or a fight – that the person who illegally furnished the minor with the alcohol should be subject to the same penalty he or she would face if it had been the minor who died.

Response:

The bill would not act as a deterrent for those tempted to give alcohol to underage friends or acquaintances unless this penalty were widely known. As it is, most people do not know the penalty for supplying a minor with a fake ID for the purposes of buying alcohol (a 93-day misdemeanor offense), that a blind pig (e.g., selling beer or other liquor without a license at a keg party) is a one-year felony, and that furnishing alcohol to a minor is a ten-year felony if the minor dies.

Current law requires the Liquor Control Commission to provide signs to licensees that must be posted in conspicuous places that describe the penalties for selling or furnishing alcohol to a minor. Perhaps the commission could be required to provide a separate sign informing the public that if the minor subsequently dies or – as the bill would add – causes

the death of another – then the deterrent effect of this provision could be increased. After all, it is reasonable to assume that a person waiting in line to purchase alcohol for an underage friend or acquaintance could realize that his or her impending action is not worth the risk of a \$5,000 fine and/or ten years in prison.

For:

Most likely, the penalty added by the bill would be triggered when a minor driving under the influence was involved in a car accident that killed another person. However, there is much anecdotal evidence that alcohol plays a significant part in the commission of many crimes. Reportedly, the state police are currently updating statistical databases and statistical analyses programs. Therefore, detailed crime information regarding the number of murders committed by minors under the influence of alcohol is incomplete at this time. Of 669 murders committed in the state in the year 2000, information relating to alcohol use was available for only 229 of those cases. However, of those murders, four were committed by intoxicated offenders under the age of 21. Also not available is information regarding the use of alcohol by minors and gang slayings. What is obvious from the available statistics is that alcohol use by minors does play a role in some murders. If alcohol were removed from the equation, perhaps a few more people would be alive today. Too many adults think that no harm will be done if they give beer and liquor to minors; expanding the penalty provision for furnishing alcohol to minors to apply in cases where the minor subsequently caused the death of another may therefore act as an effective deterrent to this way of thinking.

Against:

It would seem that liquor licensees do not face the same criminal penalties as do nonlicensees.

Response:

That is true. The bill would not create an identical penalty between liquor licensees and nonlicensees. The bill would apply only to nonlicensees. The original law creating such a tough penalty for furnishing alcohol to minors was a reaction to what was seen as a growing problem, especially in communities near college campuses, of students of legal age furnishing alcohol to minors and the minors subsequently dying from alcohol poisoning and traffic accidents. It was hoped that fear of a felony record and up to ten years imprisonment might make some students think twice before encouraging or enabling underage friends to drink.

Liquor licensees, on the other hand, are not subject to this penalty. They are, however, subject to administrative fines and license sanctions – including the loss of their liquor licenses. They are also subject to a lesser criminal penalty – a misdemeanor, punishable by a fine and/or six months in jail. Perhaps the biggest difference, though, is that liquor licensees are, by statute, civilly liable for deaths and injuries in which an unlawful sale to a minor was the proximate cause. Therefore, unlike the current penalty for nonlicensees that is only triggered when the minor dies, a liquor licensee can be sued for actual damages incurred by the death or injuries of the minor and anyone else that the minor kills or injures. Of course, nothing in law precludes a civil suit from being filed by a nonlicensee against an underage drinker who kills or injures another. But, the statute clearly establishes civil liability for liquor licensees.

POSITIONS:

The Mothers Against Drunk Driving (MADD)/Michigan State Organization supports the bill. (2-21-02)

The Michigan Interfaith Council on Alcohol Problems supports the bill. (2-21-02)

Analyst: S. Stutzky

■This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.