

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 637

A bill to amend 1998 PA 58, entitled
"Michigan liquor control code of 1998,"
by amending section 703 (MCL 436.1703), as amended by 1999 PA
53.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 703. (1) A minor shall not purchase or attempt to
2 purchase alcoholic liquor, consume or attempt to consume
3 alcoholic liquor, ~~or~~ possess or attempt to possess alcoholic
4 liquor, **or have any bodily alcohol content**, except as provided in
5 this section. ~~Notwithstanding section 909, a~~ A minor who
6 violates this subsection is guilty of a misdemeanor punishable by
7 the following fines and sanctions ~~—~~ and is not subject to the
8 penalties prescribed in section 909:

9 (a) For the first violation a fine of not more than \$100.00,
10 and may be ordered to participate in substance abuse prevention

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1 **services** or substance abuse treatment and rehabilitation services
 2 as defined in section 6107 of the public health code, 1978 PA
 3 368, MCL 333.6107, and designated by the administrator of
 4 substance abuse services, and may be ordered to perform community
 5 service and to undergo substance abuse screening and assessment
 6 at his or her own expense as described in subsection ~~-(3)-~~ (4).

7 (b) For a violation of this subsection following a prior
 8 conviction or juvenile adjudication for a violation of this
 9 subsection, ~~or~~ section 33b(1) of former 1933 (Ex Sess) PA 8, **or**
 10 **a local ordinance substantially corresponding to this subsection**
 11 **or section 33b(1) of former 1933 (Ex Sess) PA 8, by imprisonment**
 12 **for not more than 30 days but only if the minor has been found by**
 13 **the court to have violated an order of probation[, failed to successfully**
complete any treatment, screening, or community service ordered by the
court, or failed to pay any fine] for that

14 **conviction or juvenile adjudication,** a fine of not more than
 15 \$200.00, **or both,** and may be ordered to participate in substance
 16 abuse prevention **services** or substance abuse treatment and
 17 rehabilitation services as defined in section 6107 of the public
 18 health code, 1978 PA 368, MCL 333.6107, and designated by the
 19 administrator of substance abuse services, to perform community
 20 service, and to undergo substance abuse screening and assessment
 21 at his or her own expense as described in subsection ~~-(3)-~~ (4).

22 (c) For a violation of this subsection following 2 or more
 23 prior convictions or juvenile adjudications for a violation of
 24 this subsection, ~~or~~ section 33b(1) of former 1933 (Ex Sess) PA
 25 8, **or a local ordinance substantially corresponding to this**
 26 **subsection or section 33b(1) of former 1933 (Ex Sess) PA 8, by**
 27 **imprisonment for not more than 60 days but only if the minor has**

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1 been found by the court to have violated an order of probation[, failed
2 to successfully complete any treatment, screening, or community service
3 ordered by the court, or failed to pay any fine]
4 for that conviction or juvenile adjudication, a fine of not more
5 than \$500.00, or both, and may be ordered to participate in
6 substance abuse prevention **services** or substance abuse treatment
7 and rehabilitation services as defined in section 6107 of the
8 public health code, 1978 PA 368, MCL 333.6107, and designated by
9 the administrator of substance abuse services, to perform
10 community service, and to undergo substance abuse screening and
11 assessment at his or her own expense as described in subsection
12 ~~(3)~~ (4).

13 (2) A person who furnishes fraudulent identification to a
14 minor, or notwithstanding subsection (1) a minor who uses
15 fraudulent identification to purchase alcoholic liquor, is guilty
16 of a misdemeanor punishable by imprisonment for not more than 93
17 days or a fine of not more than \$100.00, or both.

18 (3) When an individual who has not previously been convicted
19 of or received a juvenile adjudication for a violation of
20 subsection (1) pleads guilty to a violation of subsection (1) or
21 offers a plea of admission in a juvenile delinquency proceeding
22 for a violation of subsection (1), the court, without entering a
23 judgment of guilt in a criminal proceeding or a determination in
24 a juvenile delinquency proceeding that the juvenile has committed
25 the offense and with the consent of the accused, may defer
26 further proceedings and place the individual on probation upon
27 terms and conditions that include, but are not limited to, the
28 sanctions set forth in subsection (1)(a), payment of the costs
29 including minimum state cost as provided for in section 18m of

1 chapter XIIIA of the probate code of 1939, 1939 PA 288, MCL
2 712A.18m, and section 1j of chapter IX of the code of criminal
3 procedure, 1927 PA 175, MCL 769.1j, and payment of a probation
4 supervision fee as prescribed in section 3c of chapter XI of the
5 code of criminal procedure, 1927 PA 175, MCL 771.3c. Upon
6 violation of a term or condition of probation or upon a finding
7 that the individual is utilizing this subsection in another
8 court, the court may enter an adjudication of guilt, or a
9 determination in a juvenile delinquency proceeding that the
10 individual has committed the offense, and proceed as otherwise
11 provided by law. Upon fulfillment of the terms and conditions of
12 probation, the court shall discharge the individual and dismiss
13 the proceedings. Discharge and dismissal under this section
14 shall be without adjudication of guilt or without a determination
15 in a juvenile delinquency proceeding that the individual has
16 committed the offense and is not a conviction or juvenile
17 adjudication for purposes of this section or for purposes of
18 disqualifications or disabilities imposed by law upon conviction
19 of a crime, including the additional penalties imposed for second
20 or subsequent convictions or juvenile adjudications under
21 subsection (1)(b) and (c). There may be only 1 discharge or
22 dismissal under this subsection as to an individual. The court
23 shall maintain a nonpublic record of the matter while proceedings
24 are deferred and the individual is on probation under this
25 subsection. The secretary of state shall retain a nonpublic
26 record of a plea and of the discharge and dismissal under this
27 subsection. This record shall be furnished to any of the

1 following:

2 (a) To a court, prosecutor, or police agency upon request for
3 the purpose of determining if an individual has already utilized
4 this subsection.

5 (b) To the department of corrections, a prosecutor, or a law
6 enforcement agency, upon the department's, a prosecutor's, or a
7 law enforcement agency's request, subject to all of the following
8 conditions:

9 (i) At the time of the request, the individual is an employee
10 of the department of corrections, the prosecutor, or the law
11 enforcement agency, or an applicant for employment with the
12 department of corrections, the prosecutor, or the law enforcement
13 agency.

14 (ii) The record is used by the department of corrections, the
15 prosecutor, or the law enforcement agency only to determine
16 whether an employee has violated his or her conditions of
17 employment or whether an applicant meets criteria for employment.

18 (4) ~~(3)~~ The court may order the person convicted of
19 violating subsection (1) to undergo screening and assessment by a
20 person or agency as designated by the substance abuse
21 coordinating agency as defined in section 6103 of the public
22 health code, 1978 PA 368, MCL 333.6103, in order to determine
23 whether the person is likely to benefit from rehabilitative
24 services, including alcohol or drug education and alcohol or drug
25 treatment programs.

26 (5) ~~(4)~~ The secretary of state shall suspend the operator's
27 or chauffeur's license of an individual convicted of violating

1 subsection (1) or (2) as provided in section 319 of the Michigan
2 vehicle code, 1949 PA 300, MCL 257.319.

3 (6) ~~—(5)—~~ A peace officer who has reasonable cause to believe
4 a minor has consumed alcoholic liquor **or has any bodily alcohol**
5 **content** may require the person to submit to a preliminary
6 chemical breath analysis. A peace officer may arrest a person
7 based in whole or in part upon the results of a preliminary
8 chemical breath analysis. The results of a preliminary chemical
9 breath analysis or other acceptable blood alcohol test are
10 admissible in a criminal prosecution to determine whether the
11 minor has consumed or possessed alcoholic liquor **or had any**
12 **bodily alcohol content**. A minor who refuses to submit to a
13 preliminary chemical breath test analysis as required in this
14 subsection is responsible for a state civil infraction and may be
15 ordered to pay a civil fine of not more than \$100.00.

16 (7) ~~—(6)—~~ A law enforcement agency, upon determining that a
17 person less than 18 years of age who is not emancipated under
18 1968 PA 293, MCL 722.1 to 722.6, allegedly consumed, possessed,
19 purchased **alcoholic liquor**, ~~—or—~~ attempted to consume, possess,
20 or purchase alcoholic liquor, **or had any bodily alcohol content**
21 in violation of subsection (1) shall notify the parent or
22 parents, custodian, or guardian of the person as to the nature of
23 the violation if the name of a parent, guardian, or custodian is
24 reasonably ascertainable by the law enforcement agency. The
25 notice required by this subsection shall be made not later than
26 48 hours after the law enforcement agency determines that the
27 person who allegedly violated subsection (1) is less than 18

1 years of age and not emancipated under 1968 PA 293, MCL 722.1 to
2 722.6. The notice may be made by any means reasonably calculated
3 to give prompt actual notice including, but not limited to,
4 notice in person, by telephone, or by first-class mail. If an
5 individual less than 17 years of age is incarcerated for
6 violating subsection (1), his or her parents or legal guardian
7 shall be notified immediately as provided in this subsection.

8 **(8)** ~~-(7)-~~ This section does not prohibit a minor from
9 possessing alcoholic liquor during regular working hours and in
10 the course of his or her employment if employed by a person
11 licensed by this act, by the commission, or by an agent of the
12 commission, if the alcoholic liquor is not possessed for his or
13 her personal consumption.

14 **(9)** ~~-(8)-~~ This section does not limit the civil or criminal
15 liability of the vendor or the vendor's clerk, servant, agent, or
16 employee for a violation of this act.

17 **(10)** ~~-(9)-~~ The consumption of alcoholic liquor by a minor who
18 is enrolled in a course offered by an accredited postsecondary
19 educational institution in an academic building of the
20 institution under the supervision of a faculty member is not
21 prohibited by this act if the purpose of the consumption is
22 solely educational and is a requirement of the course.

23 **(11)** ~~-(10)-~~ The consumption by a minor of sacramental wine in
24 connection with religious services at a church, synagogue, or
25 temple is not prohibited by this act.

26 **(12)** ~~-(11)-~~ Subsection (1) does not apply to a minor who
27 participates in either or both of the following:

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1 (a) An undercover operation in which the minor purchases or
2 receives alcoholic liquor under the direction of the person's
3 employer and with the prior approval of the local prosecutor's
4 office as part of an employer-sponsored internal enforcement
5 action.

6 (b) An undercover operation in which the minor purchases or
7 receives alcoholic liquor under the direction of the state
8 police, the commission, or a local police agency as part of an
9 enforcement action unless the initial or contemporaneous purchase
10 or receipt of alcoholic liquor by the minor was not under the
11 direction of the state police, the commission, or the local
12 police agency and was not part of the undercover operation.

13 ~~(12)~~ (13) The state police, the commission, or a local
14 police agency shall not recruit or attempt to recruit a minor for
15 participation in an undercover operation at the scene of a
16 violation of subsection (1), section 801(2), or section 701(1).

**[(14) In a criminal prosecution for the violation of subsection (1)
concerning a minor having any bodily alcohol content, it is an
affirmative defense that the minor consumed the alcoholic liquor in a
venue or location where that consumption is legal.**

17 **(15)]** As used in this section, "any bodily alcohol content"
18 means either of the following:

19 (a) An alcohol content of 0.02 grams or more per 100
20 milliliters of blood, per 210 liters of breath, or per 67
21 milliliters of urine.

22 (b) Any presence of alcohol within a person's body resulting
23 from the consumption of alcoholic liquor, other than consumption
24 of alcoholic liquor as a part of a generally recognized religious
25 service or ceremony.

26 Enacting section 1. This amendatory act takes effect
27 September 1, 2004.

1 Enacting section 2. This amendatory act does not take
2 effect unless House Bill No. 5120 of the 92nd Legislature is
3 enacted into law.