

HOUSE BILL No. 6256

November 5, 1998, Introduced by Rep. Varga and referred to the Committee on Regulatory Affairs.

A bill to amend 1931 PA 328, entitled "The Michigan penal code," by amending sections 141a, 234d, 411g, and 470 (MCL 750.141a, 750.234d, 750.411g, and 750.470), section 141a as added by 1994 PA 31, section 234d as amended by 1994 PA 158, section 411g as added by 1991 PA 56, and section 470 as amended by 1998 PA 38.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 141a. (1) As used in this section:
2 (a) "Alcoholic beverage" means an alcoholic liquor as
3 defined in section ~~2 of the Michigan liquor control act, Act~~
4 ~~No. 8 of the Public Acts of the Extra Session of 1933, being sec-~~
5 ~~tion 436.2 of the Michigan Compiled Laws~~ 105 OF THE MICHIGAN
6 LIQUOR CONTROL CODE OF 1998, 1998 PA 58, MCL 436.1105.

1 (b) "Allow" means to give permission for, or approval of,
2 possession or consumption of an alcoholic beverage or a
3 controlled substance, by any of the following means:

4 (i) In writing.

5 (ii) By 1 or more oral statements.

6 (iii) By any form of conduct, including a failure to take
7 corrective action, that would cause a reasonable person to
8 believe that permission or approval has been given.

9 (c) "Control over any premises, residence, or other real
10 property" means the authority to regulate, direct, restrain,
11 superintend, control, or govern the conduct of other individuals
12 on or within that premises, residence, or other real property,
13 and includes, but is not limited to, a possessory right.

14 (d) "Controlled substance" means that term as defined in
15 section 7104 of the public health code, ~~Act No. 368 of the~~
16 ~~Public Acts of 1978, being section 333.7104 of the Michigan~~
17 ~~Compiled Laws~~ 1978 PA 368, MCL 333.7104.

18 (e) "Corrective action" means any of the following:

19 (i) Making a prompt demand that the minor or other individ-
20 ual depart from the premises, residence, or other real property,
21 or refrain from the unlawful possession or consumption of the
22 alcoholic beverage or controlled substance on or within that
23 premises, residence, or other real property, and taking addi-
24 tional action described in subparagraph (ii) or (iii) if the
25 minor or other individual does not comply with the request.

1 (ii) Making a prompt report of the unlawful possession or
2 consumption of alcoholic liquor or a controlled substance to a
3 law enforcement agency having jurisdiction over the violation.

4 (iii) Making a prompt report of the unlawful possession or
5 consumption of alcoholic liquor or a controlled substance to
6 another person having a greater degree of authority or control
7 over the conduct of persons on or within the premises, residence,
8 or other real property.

9 (f) "Minor" means an individual less than 21 years of age.

10 (g) "Premises" means a permanent or temporary place of
11 assembly, other than a residence, including, but not limited to,
12 any of the following:

13 (i) A meeting hall, meeting room, or conference room.

14 (ii) A public or private park.

15 (h) "Residence" means a permanent or temporary place of
16 dwelling, including, but not limited to, any of the following:

17 (i) A house, apartment, condominium, or mobile home.

18 (ii) A cottage, cabin, trailer, or tent.

19 (iii) A motel unit, hotel unit, or bed and breakfast unit.

20 (i) "Social gathering" means an assembly of 2 or more indi-
21 viduals for any purpose, unless all of the individuals attending
22 the assembly are members of the same household or immediate
23 family.

24 (2) Except as otherwise provided in subsection (3), an
25 owner, tenant, or other person having control over any premises,
26 residence, or other real property shall not do either of the
27 following:

1 (a) Knowingly allow a minor to consume or possess an
2 alcoholic beverage at a social gathering on or within that
3 premises, residence, or other real property.

4 (b) Knowingly allow any individual to consume or possess a
5 controlled substance at a social gathering on or within that
6 premises, residence, or other real property.

7 (3) This section does not apply to the use, consumption, or
8 possession of a controlled substance by an individual pursuant
9 to a lawful prescription, or to the use, consumption, or posses-
10 sion of an alcoholic beverage by a minor for religious purposes.

11 (4) Except as provided in subsection (5), a person who vio-
12 lates subsection (2) is guilty of a misdemeanor punishable by
13 imprisonment for not more than 30 days or by a fine of not more
14 than \$1,000.00, or both.

15 (5) For a second or subsequent violation of subsection (2)
16 the person is guilty of a misdemeanor punishable by imprisonment
17 for not more than 90 days or by a fine of not more than
18 \$1,000.00, or both.

19 (6) Evidence of all of the following gives rise to a rebut-
20 table presumption that the defendant allowed the consumption or
21 possession of an alcoholic beverage or a controlled substance on
22 or within a premises, residence, or other real property, in vio-
23 lation of this section:

24 (a) The defendant had control over the premises, residence,
25 or other real property.

26 (b) The defendant knew that a minor was consuming or in
27 possession of an alcoholic beverage or knew that an individual

1 was consuming or in possession of a controlled substance at a
2 social gathering on or within that premises, residence, or other
3 real property.

4 (c) The defendant failed to take corrective action.

5 (7) This section does not authorize selling or furnishing an
6 alcoholic beverage to a minor.

7 (8) A criminal penalty provided for under this section may
8 be imposed in addition to any penalty that may be imposed for any
9 other criminal offense arising from the same conduct.

10 Sec. 234d. (1) Except as provided in subsection (2), a
11 person shall not possess a firearm on the premises of any of the
12 following:

13 (a) A depository financial institution or a subsidiary or
14 affiliate of a depository financial institution.

15 (b) A church or other house of religious worship.

16 (c) A court.

17 (d) A theatre.

18 (e) A sports arena.

19 (f) A day care center.

20 (g) A hospital.

21 (h) An establishment licensed under the Michigan liquor con-
22 trol ~~act, Act No. 8 of the Public Acts of the Extra Session of~~
23 ~~1933, being sections 436.1 to 436.58 of the Michigan Compiled~~
24 ~~Laws~~ CODE OF 1998, 1998 PA 58, MCL 436.1101 TO 436.2303.

25 (2) This section does not apply to any of the following:

1 (a) A person who owns, or is employed by or contracted by,
2 an entity described in subsection (1) if the possession of that
3 firearm is to provide security services for that entity.

4 (b) A peace officer.

5 (c) A person licensed by this state or another state to
6 carry a concealed weapon.

7 (d) A person who possesses a firearm on the premises of an
8 entity described in subsection (1) if that possession is with the
9 permission of the owner or an agent of the owner of that entity.

10 (3) A person who violates this section is guilty of a misde-
11 meanor punishable by imprisonment for not more than 90 days or a
12 fine of not more than \$100.00, or both.

13 Sec. 411g. (1) As used in this section:

14 (a) "Bed and breakfast" means that term as defined in sec-
15 tion 12901 of the public health code, ~~Act No. 368 of the Public~~
16 ~~Acts of 1978, being section 333.12901 of the Michigan Compiled~~
17 ~~Laws~~ 1978 PA 368, MCL 333.12901.

18 (b) "Hotel" means that term as defined in section 1 of ~~Act~~
19 ~~No. 188 of the Public Acts of 1913, being section 427.1 of the~~
20 ~~Michigan Compiled Laws~~ 1913 PA 188, MCL 427.1.

21 (2) An individual or group that does 1 or more of the fol-
22 lowing on the premises or property of a hotel or bed and break-
23 fast, or an individual or group that rents or leases a hotel room
24 or bed and breakfast room with reason to know that another indi-
25 vidual or group will do 1 or more of the following on the
26 premises or property of a hotel or bed and breakfast, is guilty
27 of a misdemeanor, punishable by imprisonment for not more than 90

1 days, community service, or by a fine of not more than \$500.00,
2 or a combination of any of these punishments:

3 (a) Uses or possesses a controlled substance in violation of
4 section 7403 or 7404 of the public health code, ~~Act No. 368 of~~
5 ~~the Public Acts of 1978, being sections 333.7403 and 333.7404 of~~
6 ~~the Michigan Compiled Laws~~ 1978 PA 368, MCL 333.7403 AND
7 333.7404, or a local ordinance substantially similar to those
8 sections.

9 (b) Consumes or possesses alcoholic liquor in violation of
10 section ~~33b of the Michigan liquor control act, Act No. 8 of the~~
11 ~~Public Acts of the Extra Session of 1933, being section 436.33b~~
12 ~~of the Michigan Compiled Laws~~ 703 OF THE MICHIGAN LIQUOR CONTROL
13 CODE OF 1998, 1998 PA 38, MCL 436.1703, or a local ordinance sub-
14 stantially similar to that section.

15 (c) Commits a violation of this section resulting in damage
16 to the room or its furnishings.

17 (3) In a case involving damage to the room, a court may
18 order the individual to pay restitution which may include the
19 reasonable loss of revenue resulting from the inability to rent
20 or lease the room during the period of time the room is being
21 repaired.

22 (4) The owner or operator of the hotel or bed and breakfast
23 shall post a copy of this section in a conspicuous place adjacent
24 to the site of registration for a room or inside the room.

25 (5) This section does not prohibit the prosecution of an
26 individual for the underlying violation which occurred on the
27 premises or property of the hotel or bed and breakfast.

1 Sec. 470. (1) Except as provided in subsection (2), a
2 person, in a place of public accommodation to which access by
3 minors is not prohibited by law, shall not sell or distribute
4 cigarettes, cigars, or other tobacco products through the use of
5 a vending machine, or install or maintain a vending machine with
6 the intent of selling or distributing cigarettes, cigars, or
7 other tobacco products. For purposes of this section, "place of
8 public accommodation" has the same meaning as that term has in
9 section 301(a) of the persons with disabilities civil rights act,
10 1976 PA 220, MCL 37.1301.

11 (2) This section does not apply to a cigarette vending
12 machine that meets either of the following criteria:

13 (a) The cigarette vending machine is located in an estab-
14 lishment that has a class C license as defined in section ~~2t of~~
15 ~~the Michigan liquor control act, 1933 (Ex Sess) PA 8, MCL 436.2t~~
16 107 OF THE MICHIGAN LIQUOR CONTROL CODE OF 1998, 1998 PA 58, MCL
17 436.1107, and 1 of the following applies:

18 (i) If the establishment has a bar that is located in a room
19 that is separated from the remainder of the establishment by a
20 wall and a doorway, the cigarette vending machine is located
21 entirely in that room.

22 (ii) If the establishment has a bar that is not located in a
23 room that is separated from the remainder of the establishment by
24 a wall and a doorway, the cigarette vending machine is located
25 not more than 20 feet from the bar, is located clearly within the
26 bar area and not in a hallway, coat room, rest room, or similar

1 unrelated area, and is under the direct visual supervision of an
2 adult.

3 (b) The cigarette vending machine is located entirely in an
4 area, office, plant, factory, or private membership club that is
5 not open to the public, and is located not less than 20 feet from
6 all entrances and exits that are accessible to the general
7 public.

8 (3) A person who violates this section is guilty of a misde-
9 meanor, punishable by imprisonment for not more than 6 months,
10 service to the community for a period of not more than 45 days,
11 or a fine of not more than \$1,000.00, or any combination of
12 imprisonment, community service, or fine. Each day that a person
13 has a vending machine that dispenses cigarettes, cigars, or other
14 tobacco products constitutes a separate offense.

15 (4) The provisions of this section shall be enforceable by a
16 local health department to the same extent and by the same means
17 as regulations adopted by that local health department.