

**STATE OF MICHIGAN
96TH LEGISLATURE
REGULAR SESSION OF 2012**

Introduced by Reps. Forlini, Lori, Wayne Schmidt, Haines, Tyler, Huuki, Agema, Moss, Franz, Lane, Smiley, Lund, Ananich, Byrum, Liss, Haugh, Barnett, Bauer, Bledsoe, Constan, Cotter, Denby, Durhal, Farrington, Haveman, Heise, Hovey-Wright, Howze, Hughes, Jackson, Lyons, McCann, Meadows, O'Brien, Olson, Poleski, Price, Rendon, Rutledge, Santana, Slavens, Stallworth, Stamas, Stapleton, Talabi, Walsh and Zorn

ENROLLED HOUSE BILL No. 4393

AN ACT to amend 1998 PA 58, entitled "An act to create a commission for the control of the alcoholic beverage traffic within this state, and to prescribe its powers, duties, and limitations; to provide for powers and duties for certain state departments and agencies; to impose certain taxes for certain purposes; to provide for the control of the alcoholic liquor traffic within this state and to provide for the power to establish state liquor stores; to prohibit the use of certain devices for the dispensing of alcoholic vapor; to provide for the care and treatment of alcoholics; to provide for the incorporation of farmer cooperative wineries and the granting of certain rights and privileges to those cooperatives; to provide for the licensing and taxation of activities regulated under this act and the disposition of the money received under this act; to prescribe liability for retail licensees under certain circumstances and to require security for that liability; to provide procedures, defenses, and remedies regarding violations of this act; to provide for the enforcement and to prescribe penalties for violations of this act; to provide for allocation of certain funds for certain purposes; to provide for the confiscation and disposition of property seized under this act; to provide referenda under certain circumstances; and to repeal acts and parts of acts," by amending section 703 (MCL 436.1703), as amended by 2006 PA 443.

The People of the State of Michigan enact:

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

(a) For the first violation by a fine of not more than \$100.00. A court may order a minor under this subdivision to participate in substance abuse prevention services or substance abuse treatment and rehabilitation services as defined in section 6107 of the public health code, 1978 PA 368, MCL 333.6107, and designated by the administrator of the office of substance abuse services, and may order that minor to perform community service and to undergo substance abuse screening and assessment at his or her own expense as described in subsection (5).

(b) For a second violation of this subsection, section 33b(1) of former 1933 (Ex Sess) PA 8, or a local ordinance substantially corresponding to this subsection or section 33b(1) of former 1933 (Ex Sess) PA 8, by imprisonment for not more than 30 days but only if the court finds that the minor 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 conviction or juvenile adjudication, by a fine of not more than \$200.00, or both. A court may order a minor under this subdivision to participate in substance abuse prevention services or substance abuse treatment and rehabilitation services as defined in section 6107 of the public health code, 1978 PA 368, MCL 333.6107, and designated by the administrator of the office of substance abuse services, to perform community service, and to undergo substance abuse screening and assessment at his or her own expense as described in subsection (5).

(c) For a third or subsequent violation of this subsection, section 33b(1) of former 1933 (Ex Sess) PA 8, or a local ordinance substantially corresponding to this subsection or section 33b(1) of former 1933 (Ex Sess) PA 8, by imprisonment for not more than 60 days but only if the court finds that the minor 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 conviction or juvenile adjudication, by a fine of not more than \$500.00, or both. A court may order a minor under this subdivision to participate in substance abuse prevention services or substance abuse treatment and rehabilitation services as defined in section 6107 of the public health code, 1978 PA 368, MCL 333.6107, and designated by the administrator of the office of substance abuse services, to perform community service, and to undergo substance abuse screening and assessment at his or her own expense as described in subsection (5).

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

(3) When an individual who has not previously been convicted of or received a juvenile adjudication for a violation of subsection (1) pleads guilty to a violation of subsection (1) or offers a plea of admission in a juvenile delinquency proceeding for a violation of subsection (1), the court, without entering a judgment of guilt in a criminal proceeding or a determination in a juvenile delinquency proceeding that the juvenile has committed the offense and with the consent of the accused, may defer further proceedings and place the individual on probation. The terms and conditions of that probation include, but are not limited to, the sanctions set forth in subsection (1)(a), payment of the costs including minimum state cost as provided for in section 18m of chapter XIIA of the probate code of 1939, 1939 PA 288, MCL 712A.18m, and section 1j of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.1j, and the costs of probation as prescribed in section 3 of chapter XI of the code of criminal procedure, 1927 PA 175, MCL 771.3. If a court finds that an individual violated a term or condition of probation or that the individual is utilizing this subsection in another court, the court may enter an adjudication of guilt, or a determination in a juvenile delinquency proceeding that the individual has committed the offense, and proceed as otherwise provided by law. If an individual fulfills the terms and conditions of probation, the court shall discharge the individual and dismiss the proceedings. Discharge and dismissal under this section shall be without adjudication of guilt or without a determination in a juvenile delinquency proceeding that the individual has committed the offense and is not a conviction or juvenile adjudication for purposes of disqualifications or disabilities imposed by law upon conviction of a crime. An individual may obtain only 1 discharge and dismissal under this subsection. The court shall maintain a nonpublic record of the matter while proceedings are deferred and the individual is on probation and if there is a discharge and dismissal under this subsection. The secretary of state shall retain a nonpublic record of a plea and of the discharge and dismissal under this subsection. These records shall be furnished to any of the following:

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

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

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

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

(4) A violation of subsection (1) successfully deferred, discharged, and dismissed under subsection (3) is considered a prior violation for the purposes of subsection (1)(b) and (c).

(5) A court may order an individual convicted of violating subsection (1) to undergo screening and assessment by a person or agency as designated by the substance abuse coordinating agency as defined in section 6103 of the public health code, 1978 PA 368, MCL 333.6103, in order to determine whether the individual is likely to benefit from rehabilitative services, including alcohol or drug education and alcohol or drug treatment programs. A court may order an individual subject to a conviction or juvenile adjudication of, or placed on probation regarding, a violation of subsection (1) to submit to a random or regular preliminary chemical breath analysis. The parent, guardian, or custodian of a minor under 18 years of age not emancipated under 1968 PA 293, MCL 722.1 to 722.6, may request a random or regular preliminary chemical breath analysis as part of the probation.

(6) The secretary of state shall suspend the operator's or chauffeur's license of an individual convicted of violating subsection (1) or (2) as provided in section 319 of the Michigan vehicle code, 1949 PA 300, MCL 257.319.

(7) A peace officer who has reasonable cause to believe a minor has consumed alcoholic liquor or has any bodily alcohol content may require that individual to submit to a preliminary chemical breath analysis. A peace officer may arrest an individual based in whole or in part upon the results of a preliminary chemical breath analysis. The results of a preliminary chemical breath analysis or other acceptable blood alcohol test are admissible in a criminal prosecution to determine whether the minor has consumed or possessed alcoholic liquor or had any bodily alcohol content. A minor who refuses to submit to a preliminary chemical breath test analysis as required in this subsection is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than \$100.00.

(8) A law enforcement agency, upon determining that an individual less than 18 years of age who is not emancipated under 1968 PA 293, MCL 722.1 to 722.6, allegedly consumed, possessed, purchased alcoholic liquor, attempted to consume, possess, or purchase alcoholic liquor, or had any bodily alcohol content in violation of subsection (1) shall notify the parent or parents, custodian, or guardian of the individual as to the nature of the violation if the name of a parent, guardian, or custodian is reasonably ascertainable by the law enforcement agency. The law enforcement agency shall notify the parent, guardian, or custodian not later than 48 hours after the law enforcement agency determines that the individual who allegedly violated subsection (1) is less than 18 years of age and not emancipated under 1968 PA 293, MCL 722.1 to 722.6. The law enforcement agency may notify the parent, guardian, or custodian by any means reasonably calculated to give prompt actual notice including, but not limited to, notice in person, by telephone, or by first-class mail. If an individual less than 17 years of age is incarcerated for violating subsection (1), his or her parents or legal guardian shall be notified immediately as provided in this subsection.

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

(10) The following individuals are not considered to be in violation of subsection (1):

(a) A minor who has consumed alcoholic liquor and who voluntarily presents himself or herself to a health facility or agency for treatment or for observation including, but not limited to, medical examination and treatment for any condition arising from a violation of sections 520b to 520g of the Michigan penal code, 1931 PA 328, MCL 750.520b to 750.520g, committed against a minor.

(b) A minor who accompanies an individual who meets both of the following criteria:

(i) Has consumed alcoholic liquor.

(ii) Voluntarily presents himself or herself to a health facility or agency for treatment or for observation including, but not limited to, medical examination and treatment for any condition arising from a violation of sections 520b to 520g of the Michigan penal code, 1931 PA 328, MCL 750.520b to 750.520g, committed against a minor.

(c) A minor who initiates contact with a peace officer or emergency medical services personnel for the purpose of obtaining medical assistance for a legitimate health care concern.

(11) If a minor under the age of 18 who is not emancipated under 1968 PA 293, MCL 722.1 to 722.6, voluntarily presents himself or herself to a health facility or agency for treatment or for observation as provided under subsection (10), the health facility or agency shall notify the parent or parents, guardian, or custodian of the individual as to the nature of the treatment or observation if the name of a parent, guardian, or custodian is reasonably ascertainable by the health facility or agency.

(12) This section does not limit the civil or criminal liability of a vendor or the vendor's clerk, servant, agent, or employee for a violation of this act.

(13) The consumption of alcoholic liquor by a minor who is enrolled in a course offered by an accredited postsecondary educational institution in an academic building of the institution under the supervision of a faculty member is not prohibited by this act if the purpose of the consumption is solely educational and is a requirement of the course.

(14) The consumption by a minor of sacramental wine in connection with religious services at a church, synagogue, or temple is not prohibited by this act.

(15) Subsection (1) does not apply to a minor who participates in either or both of the following:

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

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

(17) 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.

(18) As used in this section:

(a) "Any bodily alcohol content" means either of the following:

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

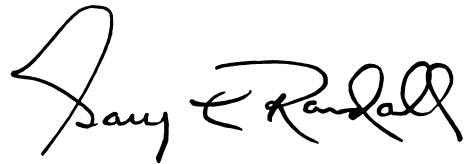
(ii) Any presence of alcohol within a person's body resulting from the consumption of alcoholic liquor, other than consumption of alcoholic liquor as a part of a generally recognized religious service or ceremony.

(b) "Emergency medical services personnel" means that term as defined in section 20904 of the public health code, 1978 PA 368, MCL 333.20904.

(c) "Health facility or agency" means that term as defined in section 20106 of the public health code, 1978 PA 368, MCL 333.20106.

Enacting section 1. This amendatory act takes effect June 1, 2012.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor