

## PARTY HOST LIABILITY

### Senate Bill 154 (Substitute H-1) First Analysis (2-3-94)

Sponsor: Senator Frederick Dillingham  
Senate Committee: Judiciary  
House Committee: Judiciary

#### ***THE APPARENT PROBLEM:***

Many Michigan communities reportedly have experienced problems with youths who imbibe alcohol and use controlled substances at parties and other social gatherings. Often, many people claim, the alcohol and/or drugs are allowed, or even supplied, by the property owner or tenant hosting the party. Several communities have enacted ordinances making those who knowingly allow minors to consume alcohol or controlled substances at social gatherings criminally liable for their actions. Reportedly, although these measures have reduced the incidence of minors' consuming alcohol at social gatherings within a community, sometimes the location of a party simply is moved outside the city limits. To discourage this permissive party activity, some people feel that a state law should be enacted to impose criminal liability on those who allow minors to consume alcohol or drugs.

#### ***THE CONTENT OF THE BILL:***

The bill would amend the Michigan Penal Code to make it a misdemeanor to knowingly allow underage drinking at a social gathering, or to knowingly allow anyone to consume or possess a controlled substance at a social gathering. A first offense would be punishable by up to 30 days in jail and/or a fine of up to \$1,000. A second or subsequent offense also would be subject to a \$1,000 maximum fine, but the possible jail term would be 90 days. The bill would take effect May 1, 1994. A more detailed explanation follows.

**Application.** The bill would apply to an owner, tenant, or any other person who had control over any premises, residence, or other real property. The bill would not apply when a controlled substance was being used under prescription, or to drinking for religious purposes. The bill would not apply when the "social gathering" consisted entirely of members of the same household.

**Rebuttable presumption.** Evidence of all of the following would give rise to a rebuttable presumption that the defendant had violated the bill: the defendant had control over the premises; the defendant knew that a minor was consuming or in possession of an alcoholic beverage or that an individual was consuming or in possession of a controlled substance at a social gathering on those premises; and, the defendant failed to take corrective action.

**Additional penalties.** A penalty under the bill could be imposed in addition to a penalty for any other criminal offense arising from the same conduct.

**Selected definitions.** "Allow" would mean to give permission or approval in writing or by oral statement or by conduct, including failure to take corrective action, that would cause a reasonable person to believe that permission or approval had been given.

"Corrective action" would mean any of the following:

\*\* making a prompt demand that the minor or other individual depart from the premises, or refrain from the proscribed behavior, plus taking additional action as follows if the individual did not comply with the request.

\*\* promptly reporting the matter to someone with greater authority over the premises.

\*\* promptly reporting the matter to the police.

"Control over any premises" would mean authority to regulate, direct, restrain, superintend, control, or govern the conduct of other individuals on or within the premises. The term would include, but not be limited to, a possessory right.

MCL 750.141a

**HOUSE COMMITTEE ACTION:**

The House Judiciary Committee adopted a substitute bill that differed from the Senate-passed version in providing for a shorter jail term and higher fine for first offenses, and in providing for enhanced penalties for repeat offenses. The House substitute also changed the proposed effective date from January 1, 1994 to May 1, 1994.

**FISCAL IMPLICATIONS:**

With regard to an earlier version of the bill, the Senate Fiscal Agency said that the bill would have no impact on state government and an indeterminate impact on local government. The new penalties proposed in the bill could increase local costs for prosecuting and incarcerating those individuals found guilty of violating the bill's provisions. There are no estimates available on how many people might be convicted under the bill. The additional fines could generate additional revenue yet the exact amount would depend on the number of individuals convicted and the amount assessed from each fine. (5-24-93)

**ARGUMENTS:****For:**

Alcohol and drug use by minors is a major problem in today's society and one cause of the problem is the free access to those substances at so-called "open house" parties. This is the case particularly in the spring and early summer when graduation parties are prevalent. Several communities in Michigan have led the battle against the permissive use of alcohol by youths by enacting ordinances that make it a criminal act to allow minors to consume drugs or alcohol at social gatherings. The ordinances have been effective in stemming the tide of alcohol- and drug-related accidents and injuries within those communities, but people reportedly have evaded the law by moving the parties to other locales. To combat this circumvention of the law, a similar law that would apply statewide should be passed. By reducing the use of alcohol and illegal drugs, which in turn would reduce the incidence of automobile accidents, the bill would prevent injuries and save lives. The bill also would send a message that allowing minors to drink, and allowing anyone to use illegal drugs, will not be tolerated in this state.

**For:**

According to some high school students, drinking by minors is quite common, and, all too often, the alcohol is supplied by adults. Passage of the bill would be a positive step in battling the attitude that drug and alcohol abuse by minors is okay. The bill also would relieve peer pressure on minors to partake in drug and alcohol use, and the threat of criminal retribution would give parents and other adults the courage to say no when confronted with a situation in which minors might find drinking acceptable.

**Against:**

The bill would create a new crime at a time when the state faces overloaded court dockets and chronic shortages of prison and jail space. Rather than addressing various social problems with piecemeal criminal penalties, the state should first enact comprehensive sentencing guidelines legislation that would guarantee a consistent and coherent system of punishment.

**Against:**

Under the bill, a person who had acted, but acted ineffectively, to stop behavior proscribed by the bill might be vulnerable to criminal prosecution and a stiff fine. Under some possible scenarios, a person would be required to call the police if a 20-year-old was drinking a glass of wine with her parents present, or if an adult guest with glaucoma admitted having a small quantity of marihuana in his pocket. Some might question whether these are situations where a host should be legally required to insist that a guest stop or leave.

**Against:**

The bill generally is a good proposal, but it could go further to deter the provision of drugs and alcohol to minors. Some may find the penalties proposed by the bill to fall short of what is warranted. Further, the bill would subject the owner or tenant of property where a violation occurred to criminal sanctions, but would provide no penalty for the minors in attendance. Some type of education and counseling program should be required of both violators of the bill and minors whom the owner or tenant allowed to use alcohol or drugs. Also, some people claim that these open house parties often are hosted by minors when parents are away from home. Parents who fail to take steps to prevent minors from having access to alcohol should be penalized as well. In addition, exposure to civil liability should be enhanced. These measures would

provide for greater deterrence and more meaningful punishment.

***POSITIONS:***

The Michigan Interfaith Council on Alcohol Problems (MICAP) supports the bill. (2-1-94)

The Department of State Police supports the concept of the bill. (2-1-94)

The Michigan Council on Crime and Delinquency opposes the creation of any new crimes until a comprehensive and consistent system of sentencing guidelines is enacted. (2-2-94)