

# HOUSE BILL No. 5619

March 3, 1998, Introduced by Reps. Walberg, Kukuk, Horton, Whyman, Cropsey, Scranton, Richner, Brackenridge, Gernaat, Goschka, Birkholz, Varga, London, Lowe, McBryde, Voorhees and Perricone and referred to the Committee on Regulatory Affairs.

A bill to amend 1933 (Ex Sess) PA 8, entitled  
"The Michigan liquor control act,"  
by amending section 33b (MCL 436.33b), as amended by 1996 PA  
492.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 33b. (1) A person less than 21 years of age shall not  
2 purchase or attempt to purchase alcoholic liquor, consume or  
3 attempt to consume alcoholic liquor, or possess or attempt to  
4 possess alcoholic liquor OR HAVE ANY BODILY ALCOHOL CONTENT,  
5 except as provided in this section and section ~~33a(1)~~ 624B(1)  
6 OF THE MICHIGAN VEHICLE CODE, 1949 PA 300, MCL 257.624B.  
7 Notwithstanding section 50, a person less than 21 years of age  
8 who violates this subsection is guilty of a misdemeanor  
9 punishable by the following fines and sanctions, and is not  
10 subject to the penalties prescribed in section 50:

1 (a) For the first violation a fine of not more than \$100.00,  
2 and may be ordered to participate in substance abuse prevention  
3 or substance abuse treatment and rehabilitation services as  
4 defined in section 6107 of the public health code, ~~Act No. 368~~  
5 ~~of the Public Acts of 1978, being section 333.6107 of the~~  
6 ~~Michigan Compiled Laws~~ 1978 PA 368, MCL 333.6107, and designated  
7 by the administrator of substance abuse services, and may be  
8 ordered to perform community service and to undergo substance  
9 abuse screening and assessment at his or her own expense as  
10 described in subsection (3).

11 (b) For a second violation a fine of not more than \$200.00,  
12 and may be ordered to participate in substance abuse prevention  
13 or substance abuse treatment and rehabilitation services as  
14 defined in section 6107 of ~~Act No. 368 of the Public Acts of~~  
15 ~~1978~~ THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.6107, and des-  
16 ignated by the administrator of substance abuse services, to per-  
17 form community service, and to undergo substance abuse screening  
18 and assessment at his or her own expense as described in subsec-  
19 tion (3). The person is also subject to sanctions against his or  
20 her operator's or chauffeur's license imposed in subsection (4).

21 (c) For a third or subsequent violation a fine of not more  
22 than \$500.00, and may be ordered to participate in substance  
23 abuse prevention or substance abuse treatment and rehabilitation  
24 services as defined in section 6107 of ~~Act No. 368 of the Public~~  
25 ~~Acts of 1978~~ THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.6107,  
26 and designated by the administrator of substance abuse services,  
27 to perform community service, and to undergo substance abuse

1 screening and assessment at his or her own expense as described  
2 in subsection (3). The person is also subject to sanctions  
3 against his or her operator's or chauffeur's license imposed in  
4 subsection (4).

5 (2) A person who furnishes fraudulent identification to a  
6 person less than 21 years of age, or notwithstanding subsection  
7 (1) a person less than 21 years of age who uses fraudulent iden-  
8 tification to purchase alcoholic liquor, is guilty of a  
9 misdemeanor. The court shall order the secretary of state to  
10 suspend, pursuant to section 319(5) of ~~Act No. 300 of the Public~~  
11 ~~Acts of 1949, being section 257.319 of the Michigan Compiled~~  
12 ~~Laws~~ THE MICHIGAN VEHICLE CODE, 1949 PA 300, MCL 257.319, for a  
13 period of 90 days, the ~~operator~~ OPERATOR'S or ~~chauffeur~~  
14 CHAUFFEUR'S license of a person who is convicted of furnishing or  
15 using fraudulent identification in violation of this subsection  
16 and the ~~operator~~ OPERATOR'S or ~~chauffeur~~ CHAUFFEUR'S license  
17 of that person shall be surrendered to the court. The court  
18 shall immediately forward the surrendered license and an abstract  
19 of conviction to the secretary of state. A suspension ordered  
20 under this subsection shall be in addition to any other suspen-  
21 sion of the person's ~~operator~~ OPERATOR'S or ~~chauffeur~~  
22 CHAUFFEUR'S license.

23 (3) The court may order the person found violating subsec-  
24 tion (1) to undergo screening and assessment by a person or  
25 agency as designated by the substance abuse coordinating agency  
26 as defined in section 6103 of ~~Act No. 368 of the Public Acts of~~  
27 ~~1978, being section 333.6103 of the Michigan Compiled Laws~~ THE

1 PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.6103, in order to  
2 determine whether the person is likely to benefit from rehabili-  
3 tative services, including alcohol or drug education and alcohol  
4 or drug treatment programs.

5 (4) Immediately upon the entry of a conviction or a probate  
6 court disposition for a violation of subsection (1), the court  
7 shall consider all prior convictions or probate court disposi-  
8 tions of subsection (1), or a local ordinance or law of another  
9 state substantially corresponding to subsection (1), and shall  
10 impose the following sanctions:

11 (a) If the court finds that the person has 1 such prior con-  
12 viction or probate court disposition, the court shall order the  
13 secretary of state to suspend the operator's or chauffeur's  
14 license of the person for a period of not less than 90 days or  
15 more than 180 days. The court may order the secretary of state  
16 to issue to the person a restricted license after the first 30  
17 days of the period of suspension in the manner described in sub-  
18 section (5) and provided for in section 319 of ~~Act No. 300 of~~  
19 ~~the Public Acts of 1949, being section 257.319 of the Michigan~~  
20 ~~Compiled Laws~~ THE MICHIGAN VEHICLE CODE, 1949 PA 300, MCL  
21 257.319. In the case of a person who does not possess an  
22 operator's or chauffeur's license, the secretary of state shall  
23 deny the application for an operator's or chauffeur's license for  
24 the applicable suspension period.

25 (b) If the court finds that the person has 2 or more such  
26 prior convictions or probate court dispositions, the court shall  
27 order the secretary of state to suspend the operator's or

1 chauffeur's license of the person for a period of not less than  
2 180 days or more than 1 year. The court may order the secretary  
3 of state to issue to the person a restricted license after the  
4 first 60 days of the period of suspension in the manner described  
5 in subsection (5) and provided for in section 319 of ~~Act No. 300~~  
6 ~~of the Public Acts of 1949, being section 257.319 of the Michigan~~  
7 ~~Compiled Laws~~ THE MICHIGAN VEHICLE CODE, 1949 PA 300, MCL  
8 257.319. In the case of a person who does not possess an  
9 operator's or chauffeur's license, the secretary of state shall  
10 deny the application for an operator's or chauffeur's license for  
11 the applicable suspension period.

12 (5) In those cases in which a restricted license is allowed  
13 under this section, the court shall not order the secretary of  
14 state to issue a restricted license unless the person states  
15 under oath, and the court finds based upon the record in open  
16 court, that the person is unable to take public transportation to  
17 and from his or her work location, place of alcohol or drug edu-  
18 cation treatment, probation department, court-ordered community  
19 service program, or educational institution, and does not have  
20 any family members or others able to provide transportation. The  
21 court order under subsection (4) and the restricted license shall  
22 indicate the work location of the person to whom it is issued,  
23 the approved route or routes and permitted times of travel, and  
24 shall permit the person to whom it is issued only to do 1 or more  
25 of the following:

26 (a) Drive to and from the person's residence and work  
27 location.

1 (b) Drive in the course of the person's employment or  
2 occupation.

3 (c) Drive to and from the person's residence and an alcohol  
4 or drug education or treatment program as ordered by the court.

5 (d) Drive to and from the person's residence and the court  
6 probation department, or a court-ordered community service pro-  
7 gram, or both.

8 (e) Drive to and from the person's residence and an educa-  
9 tional institution at which the person is enrolled as a student.

10 (6) If license sanctions are imposed, immediately upon the  
11 entry of a court-ordered sanction pursuant to subsection (4), the  
12 court shall order the person convicted for the violation to sur-  
13 render to the court his or her operator's or chauffeur's  
14 license. The court shall immediately forward a notice of  
15 court-ordered license sanctions to the secretary of state. If  
16 the license is not forwarded to the secretary of state, an expla-  
17 nation of the reason why the license is absent shall be  
18 attached. If the finding is appealed to the circuit court, the  
19 court may, ex parte, order the secretary of state to stay the  
20 suspension issued pursuant to this section pending the outcome of  
21 the appeal. Immediately following imposition of the sanction,  
22 the court shall forward a notice to the secretary of state indi-  
23 cating the sanction imposed.

24 (7) A peace officer who has reasonable cause to believe a  
25 person less than 21 years of age has consumed alcoholic liquor  
26 may require the person to submit to a preliminary chemical breath  
27 analysis. A peace officer may arrest a person based in whole or

1 in part upon the results of a preliminary chemical breath  
2 analysis. The results of a preliminary chemical breath analysis  
3 or other acceptable blood alcohol test are admissible in a crimi-  
4 nal prosecution to determine whether the person less than 21  
5 years of age has consumed or possessed alcoholic liquor. A  
6 person less than 21 years of age who refuses to submit to a pre-  
7 liminary chemical breath test analysis as required in this sub-  
8 section is responsible for a state civil infraction and may be  
9 ordered to pay a civil fine of not more than \$100.00.

10 (8) A law enforcement agency, upon determining that a person  
11 less than 18 years of age who is not emancipated pursuant to ~~Act~~  
12 ~~No. 293 of the Public Acts of 1968, being sections 722.1 to 722.6~~  
13 ~~of the Michigan Compiled Laws~~ 1968 PA 293, MCL 722.1 TO 722.6,  
14 allegedly consumed, possessed, purchased, or attempted to con-  
15 sume, possess, or purchase alcoholic liquor in violation of  
16 subsection (1) shall notify the parent or parents, custodian, or  
17 guardian of the person as to the nature of the violation if the  
18 name of a parent, guardian, or custodian is reasonably ascertain-  
19 able by the law enforcement agency. The notice required by this  
20 subsection shall be made not later than 48 hours after the law  
21 enforcement agency determines that the person who allegedly vio-  
22 lated subsection (1) is less than 18 years of age and not emanci-  
23 pated pursuant to ~~Act No. 293 of the Public Acts of 1968~~ 1968  
24 PA 293, MCL 722.1 TO 722.6. The notice may be made by any means  
25 reasonably calculated to give prompt actual notice including, but  
26 not limited to, notice in person, by telephone, or by first-class  
27 mail. If a person less than 17 years of age is incarcerated for

1 violating subsection (1), his or her parents or legal guardian  
2 shall be notified immediately as provided in this subsection.

3 (9) This section does not prohibit a person less than 21  
4 years of age from possessing alcoholic liquor during regular  
5 working hours and in the course of his or her employment if  
6 employed by a person licensed by this act, by the commission, or  
7 by an agent of the commission, if the alcoholic liquor is not  
8 possessed for his or her personal consumption.

9 (10) This section shall not be construed to limit the civil  
10 or criminal liability of the vendor or the vendor's clerk, ser-  
11 vant, agent, or employee for a violation of this act.

12 (11) ~~The~~ THIS ACT DOES NOT PROHIBIT THE consumption of  
13 alcoholic liquor by a person less than 21 years of age who is  
14 enrolled in a course offered by an accredited ~~post secondary~~  
15 POSTSECONDARY educational institution in an academic building of  
16 the institution under the supervision of a faculty member ~~is not~~  
17 ~~prohibited by this act~~ if the purpose of the consumption is  
18 solely educational and is a necessary ingredient of the course.  
19 CONSUMPTION UNDER THIS SUBSECTION IS NOT CONSIDERED TO BE A VIO-  
20 LATION OF SUBSECTION (1) RELATIVE TO THE PROHIBITION AGAINST ANY  
21 BODILY ALCOHOL CONTENT BY A PERSON LESS THAN 21 YEARS OF AGE.

22 (12) ~~The~~ THIS ACT DOES NOT PROHIBIT THE consumption by a  
23 person less than 21 years of age of sacramental wine in connec-  
24 tion with religious services at a church, synagogue, or temple.  
25 ~~is not prohibited by this act.~~ CONSUMPTION UNDER THIS SUBSEC-  
26 TION IS NOT CONSIDERED TO BE A VIOLATION OF SUBSECTION (1)



1 RELATIVE TO THE PROHIBITION AGAINST ANY BODILY ALCOHOL CONTENT BY  
2 A PERSON LESS THAN 21 YEARS OF AGE.

3 (13) Subsection (1) does not apply to a person less than 21  
4 years of age who participates in either or both of the  
5 following:

6 (a) An undercover operation in which the person less than 21  
7 years of age purchases or receives alcoholic liquor under the  
8 direction of the person's employer and with the prior approval of  
9 the local prosecutor's office as part of an employer-sponsored  
10 internal enforcement action.

11 (b) An undercover operation in which the person less than 21  
12 years of age purchases or receives alcoholic liquor under the  
13 direction of the state police, the commission, or a local police  
14 agency as part of an enforcement action ~~except~~ PROVIDED that  
15 any initial or contemporaneous purchase or receipt of alcoholic  
16 liquor by the person less than 21 years of age is under the  
17 direction of the state police, the commission, or the local  
18 police agency and is part of the undercover operation. The state  
19 police, the commission, or a local police agency shall not  
20 recruit or attempt to recruit a person less than 21 years of age  
21 for participation in an undercover operation at the scene of a  
22 violation of subsection (1), section 22(3), or section 33(1).

23 (14) As used in this section:

24 (A) "ANY BODILY ALCOHOLIC CONTENT" MEANS EITHER OF THE  
25 FOLLOWING:

1       (i) AN ALCOHOL CONTENT OF NOT LESS THAN 0.02 GRAMS OR MORE  
2 THAN 0.07 GRAMS PER 100 MILLILITERS OF BLOOD, PER 210 LITERS OF  
3 BREATH, OR PER 67 MILLILITERS OF URINE.

4       (ii) ANY PRESENCE OF ALCOHOL WITHIN A PERSON'S BODY RESULT-  
5 ING FROM THE CONSUMPTION OF ALCOHOLIC LIQUOR, OTHER THAN CONSUMP-  
6 TION OF ALCOHOLIC LIQUOR AS A PART OF A GENERALLY RECOGNIZED  
7 RELIGIOUS SERVICE OR CEREMONY.

8       (B) ~~(a)~~ "Probate court disposition" means an order of dis-  
9 position of the probate court or the family division of the cir-  
10 cuit court for a child found to be within the provisions of chap-  
11 ter XIIIA of ~~Act No. 288 of the Public Acts of 1939, being~~  
12 ~~sections 712A.1 to 712A.32 of the Michigan Compiled Laws 1939 PA~~  
13 ~~288, MCL 712A.1 TO 712A.32.~~

14       (C) ~~(b)~~ "Work location" means, as applicable, either the  
15 specific place or places of employment, or the territory or ter-  
16 ritories regularly visited by the person in pursuance of the  
17 person's occupation, or both.