



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536



Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

Senate Bill 637 (Substitute S-1)
Sponsor: Senator Tom George
Committee: Judiciary

Date Completed: 10-21-03

CONTENT

The bill would amend the Michigan Liquor Control Code to do all of the following:

- Include having "any bodily alcohol content" in the prohibition against a minor's purchasing, consuming, or possessing alcohol.**
- Include jail time in the penalties for a second or subsequent conviction.**
- Allow a first-time offender who pleaded guilty to serve a probationary term and have the charges dismissed without adjudication of guilt upon fulfilling the conditions of probation.**
- Include the "any bodily alcohol content" offense in provisions that allow preliminary breath tests, and the admissibility of test results in criminal prosecutions, for consuming or possessing alcohol.**
- Include the offense in provisions that require a law enforcement agency to notify the parent, custodian, or guardian of a minor who allegedly consumed, possessed, or purchased alcohol.**

"Any bodily alcohol content" would mean either of the following:

- An alcohol content of not less than .02 gram or more per 100 milliliters of blood, 210 liters of breath, or 67 milliliters of urine.
- Any presence of alcohol within a person's body resulting from the consumption of alcoholic liquor, other than as part of a generally recognized religious service or ceremony.

(The Liquor Control Code defines "minor" as a person under 21 years of age.)

The bill would take effect on January 31, 2004.

Minor's Alcohol Violation & Penalties

Section 703 of the Liquor Control Code prohibits a minor from purchasing or attempting to purchase, consuming or attempting to consume, or possessing or attempting to possess alcoholic liquor. The bill also would prohibit a minor from having any bodily alcohol content, and a violation would be subject to the same penalties.

A violation is a misdemeanor punishable by a maximum fine of \$100. An offender also may be ordered to participate in substance abuse prevention or substance abuse treatment and rehabilitation services and may be ordered to perform community service and undergo substance abuse screening and assessment at his or her own expense. The maximum fine is \$200 for a violation following a prior conviction or juvenile adjudication, or \$500 for a violation following two or more prior convictions or juvenile adjudications.

In addition, the Secretary of State must suspend the driver's license of a minor convicted of possessing or attempting to possess, consuming or attempting to consume, or buying or attempting to buy alcohol, as provided in Section 319 of the Michigan Vehicle Code (MCL 257.319). Under that section, if a minor has one prior conviction, the suspension must be for 90 days and the Secretary of State may issue a restricted license after the first 30 days. If a minor has two or more prior convictions, the license suspension must be for one year and the Secretary of State may issue a restricted license after 60 days.

Under the bill, a violation following a prior conviction or adjudication also would be punishable by up to 30 days' imprisonment, and the penalty for a violation following two or more prior convictions or adjudications would include up to 93 days' imprisonment.

Probation & Discharge

Under the bill, when a minor pleaded guilty to possessing, consuming, or buying alcohol, attempting to do so, or having any bodily alcohol content, and the minor had not previously been convicted of or received a juvenile adjudication for violating Section 703, the court could defer further proceedings and place the individual on probation, without entering a judgment of guilt and with the accused's consent. Terms of probation would have to include, at a minimum, the sanctions allowed for a first-time offender and payment of a probation supervision fee as prescribed under the Code of Criminal Procedure.

Upon violation of a term or condition of probation, the court could enter an adjudication of guilty and proceed as otherwise provided by law. Upon fulfillment of the probationary terms and conditions, the court would have to discharge the individual and dismiss the proceedings. The discharge and dismissal would have to be without adjudication of guilt and would not be a conviction for purposes of Section 703 or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime, including the additional penalties imposed for second or subsequent convictions of the offense. An individual could have only one discharge or dismissal under the bill.

The Department of State Police Records and Identifications Division would have to retain a nonpublic record of an arrest and discharge or dismissal under the bill. That record would have to be furnished to a court, prosecutor, or police agency upon request for the purpose of showing that a defendant had already used the discharge and dismissal allowed under the bill. The record also would have to be given to the Department of Corrections (DOC), the prosecutor, or a law enforcement agency, upon its request, subject to both of the following:

- At the time of the request, the individual was an employee of the DOC, the prosecutor, or the law enforcement agency, or was an applicant for employment.
- The DOC, the prosecutor, or the agency used the record only to determine whether an employee had violated his or her conditions of employment or whether an applicant met criteria for employment.

Preliminary Breath Test

The Code allows a peace officer who has reasonable cause to believe a minor has consumed alcohol to require the person to submit to a preliminary chemical breath analysis. A peace officer may arrest a person based on the results of that preliminary 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 alcohol. Refusal to submit to a preliminary chemical breath analysis is a State civil infraction, subject to a civil fine of up to \$100. Under the bill, these provisions also would apply to a minor whom a peace officer had reasonable cause to believe had any bodily alcohol content.

Parental Notification

The Code requires a law enforcement agency to notify the parent or parents, custodian, or guardian of an unemancipated person under 18 years of age upon determining that the person allegedly consumed, possessed, or purchased alcohol or attempted to do so, if the name of the parent, guardian, or custodian is reasonably ascertainable. Under the bill, a law enforcement agency also would have to notify the parent, guardian, or custodian of a minor who had any bodily alcohol content.

MCL 436.1703

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

Corrections. The bill would have no fiscal impact on the State and an indeterminate fiscal impact on local government.

There are no statewide data available to indicate how many minors are currently convicted of a misdemeanor for the purchase, consumption, or possession of alcoholic liquor. Local units of government incur the cost of both misdemeanor probation and incarceration in a local facility, which varies by county. The bill potentially would increase costs to local governments by adding the possibility of imprisonment for not more than 30 days for a second violation and imprisonment for not more than 93 days for a third or subsequent violation. The bill also could increase costs by increasing the number of potentially convicted offenders under the provision that would add having any bodily alcohol content to the existing offense.

Public libraries would benefit from any additional penal fine revenue collected due to the proposed changes.

Law Enforcement. The bill would have an indeterminate fiscal impact on State and local law enforcement. The bill would require the establishment of a nonpublic record of arrests and discharge or dismissal for a first offense. Since a first offense is a misdemeanor not punishable by imprisonment, it does not fall among those offenses for which a fingerprint file is mandated. Since the record system of the criminal justice information center of the Department of State Police is fingerprint-based, maintaining a nonfingerprint-based record system could result in additional costs, which cannot be determined at this time.

License Sanctions. The bill could have an impact on the Department of State if the number of license revocations changed as a result of the bill.

Fiscal Analyst: Bruce Baker
Bill Bowerman
Bethany Wicksall

S0304\sb637sb

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.