

HOUSE SUBSTITUTE FOR  
SENATE BILL NO. 637

A bill to amend 1998 PA 58, entitled  
"Michigan liquor control code of 1998,"  
by amending section 703 (MCL 436.1703), as amended by 1999 PA  
53.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

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

9       (a) For the first violation a fine of not more than \$100.00,  
10 and may be ordered to participate in substance abuse prevention

## Senate Bill No. 637 (H-2) as amended February 12, 2004

1 **services** or substance abuse treatment and rehabilitation services  
 2 as defined in section 6107 of the public health code, 1978 PA  
 3 368, MCL 333.6107, and designated by the administrator of  
 4 substance abuse services, and may be ordered to perform community  
 5 service and to undergo substance abuse screening and assessment  
 6 at his or her own expense as described in subsection ~~—(3)—~~ (4).

7 (b) For a violation of this subsection following a prior  
 8 conviction or juvenile adjudication for a violation of this  
 9 subsection, ~~—or—~~ section 33b(1) of former 1933 (Ex Sess) PA 8, **or**  
 10 **a local ordinance substantially corresponding to this subsection**  
 11 **or section 33b(1) of former 1933 (Ex Sess) PA 8, by imprisonment**  
 12 **for not more than 30 days but only if the minor has been found by**  
 13 **the court to have 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**

14 **conviction or juvenile adjudication, a fine of not more than**  
 15 **\$200.00, or both, and may be ordered to participate in substance**  
 16 **abuse prevention services** or substance abuse treatment and  
 17 rehabilitation services as defined in section 6107 of the public  
 18 health code, 1978 PA 368, MCL 333.6107, and designated by the  
 19 administrator of substance abuse services, to perform community  
 20 service, and to undergo substance abuse screening and assessment  
 21 at his or her own expense as described in subsection ~~—(3)—~~ (4).

22 (c) For a violation of this subsection following 2 or more  
 23 prior convictions or juvenile adjudications for a violation of  
 24 this subsection, ~~—or—~~ section 33b(1) of former 1933 (Ex Sess) PA  
 25 8, **or a local ordinance substantially corresponding to this**  
 26 **subsection or section 33b(1) of former 1933 (Ex Sess) PA 8, by**  
 27 **imprisonment for not more than 60 days but only if the minor has**

## Senate Bill No. 637 (H-2) as amended February 12, 2004

1 been found by the court to have violated an order of probation[, failed  
2 to successfully complete any treatment, screening, or community service  
3 ordered by the court, or failed to pay any fine]  
4 for that conviction or juvenile adjudication, a fine of not more  
5 than \$500.00, or both, and may be ordered to participate in  
6 substance abuse prevention **services** or substance abuse treatment  
7 and rehabilitation services as defined in section 6107 of the  
8 public health code, 1978 PA 368, MCL 333.6107, and designated by  
9 the administrator of substance abuse services, to perform  
10 community service, and to undergo substance abuse screening and  
11 assessment at his or her own expense as described in subsection  
12 ~~(3)~~ (4).

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

18 (3) When an individual who has not previously been convicted  
19 of or received a juvenile adjudication for a violation of  
20 subsection (1) pleads guilty to a violation of subsection (1) or  
21 offers a plea of admission in a juvenile delinquency proceeding  
22 for a violation of subsection (1), the court, without entering a  
23 judgment of guilt in a criminal proceeding or a determination in  
24 a juvenile delinquency proceeding that the juvenile has committed  
25 the offense and with the consent of the accused, may defer  
26 further proceedings and place the individual on probation upon  
27 terms and conditions that include, but are not limited to, the  
28 sanctions set forth in subsection (1)(a), payment of the costs  
29 including minimum state cost as provided for in section 18m of

Senate Bill No. 637 as amended March 31, 2004

1 chapter XIIIA of the probate code of 1939, 1939 PA 288, MCL  
2 712A.18m, and section 1j of chapter IX of the code of criminal  
3 procedure, 1927 PA 175, MCL 769.1j, and <<the costs of probation as  
4 prescribed in section 3 of chapter XI of the code of criminal procedure,  
5 1927 PA 175, MCL 771.3. >> Upon  
6 violation of a term or condition of probation or upon a finding  
7 that the individual is utilizing this subsection in another  
8 court, the court may enter an adjudication of guilt, or a  
9 determination in a juvenile delinquency proceeding that the  
10 individual has committed the offense, and proceed as otherwise  
11 provided by law. Upon fulfillment of the terms and conditions of  
12 probation, the court shall discharge the individual and dismiss  
13 the proceedings. Discharge and dismissal under this section  
14 shall be without adjudication of guilt or without a determination  
15 in a juvenile delinquency proceeding that the individual has  
16 committed the offense and is not a conviction or juvenile  
17 adjudication for purposes of this section or for purposes of  
18 disqualifications or disabilities imposed by law upon conviction  
19 of a crime, including the additional penalties imposed for second  
20 or subsequent convictions or juvenile adjudications under  
21 subsection (1) (b) and (c). There may be only 1 discharge or  
22 dismissal under this subsection as to an individual. The court  
23 shall maintain a nonpublic record of the matter while proceedings  
24 are deferred and the individual is on probation under this  
25 subsection. The secretary of state shall retain a nonpublic  
26 record of a plea and of the discharge and dismissal under this  
27 subsection. This record shall be furnished to any of the

1 following:

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

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

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

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

18 (4) ~~(3)~~ The court may order the person convicted of  
19 violating subsection (1) to undergo screening and assessment by a  
20 person or agency as designated by the substance abuse  
21 coordinating agency as defined in section 6103 of the public  
22 health code, 1978 PA 368, MCL 333.6103, in order to determine  
23 whether the person is likely to benefit from rehabilitative  
24 services, including alcohol or drug education and alcohol or drug  
25 treatment programs.

26 (5) ~~(4)~~ The secretary of state shall suspend the operator's  
27 or chauffeur's license of an individual convicted of violating

1 subsection (1) or (2) as provided in section 319 of the Michigan  
2 vehicle code, 1949 PA 300, MCL 257.319.

3       (6) ~~—(5)—~~ A peace officer who has reasonable cause to believe  
4 a minor has consumed alcoholic liquor **or has any bodily alcohol**  
5 **content** may require the person to submit to a preliminary  
6 chemical breath analysis. A peace officer may arrest a person  
7 based in whole or in part upon the results of a preliminary  
8 chemical breath analysis. The results of a preliminary chemical  
9 breath analysis or other acceptable blood alcohol test are  
10 admissible in a criminal prosecution to determine whether the  
11 minor has consumed or possessed alcoholic liquor **or had any**  
12 **bodily alcohol content**. A minor who refuses to submit to a  
13 preliminary chemical breath test analysis as required in this  
14 subsection is responsible for a state civil infraction and may be  
15 ordered to pay a civil fine of not more than \$100.00.

16       (7) ~~—(6)—~~ A law enforcement agency, upon determining that a  
17 person less than 18 years of age who is not emancipated under  
18 1968 PA 293, MCL 722.1 to 722.6, allegedly consumed, possessed,  
19 purchased **alcoholic liquor**, ~~—or—~~ attempted to consume, possess,  
20 or purchase alcoholic liquor, **or had any bodily alcohol content**  
21 in violation of subsection (1) shall notify the parent or  
22 parents, custodian, or guardian of the person as to the nature of  
23 the violation if the name of a parent, guardian, or custodian is  
24 reasonably ascertainable by the law enforcement agency. The  
25 notice required by this subsection shall be made not later than  
26 48 hours after the law enforcement agency determines that the  
27 person who allegedly violated subsection (1) is less than 18

1 years of age and not emancipated under 1968 PA 293, MCL 722.1 to  
2 722.6. The notice may be made by any means reasonably calculated  
3 to give prompt actual notice including, but not limited to,  
4 notice in person, by telephone, or by first-class mail. If an  
5 individual less than 17 years of age is incarcerated for  
6 violating subsection (1), his or her parents or legal guardian  
7 shall be notified immediately as provided in this subsection.

8       (8) ~~—(7)—~~ This section does not prohibit a minor from  
9 possessing alcoholic liquor during regular working hours and in  
10 the course of his or her employment if employed by a person  
11 licensed by this act, by the commission, or by an agent of the  
12 commission, if the alcoholic liquor is not possessed for his or  
13 her personal consumption.

14       (9) ~~—(8)—~~ This section does not limit the civil or criminal  
15 liability of the vendor or the vendor's clerk, servant, agent, or  
16 employee for a violation of this act.

17       (10) ~~—(9)—~~ The consumption of alcoholic liquor by a minor who  
18 is enrolled in a course offered by an accredited postsecondary  
19 educational institution in an academic building of the  
20 institution under the supervision of a faculty member is not  
21 prohibited by this act if the purpose of the consumption is  
22 solely educational and is a requirement of the course.

23       (11) ~~—(10)—~~ The consumption by a minor of sacramental wine in  
24 connection with religious services at a church, synagogue, or  
25 temple is not prohibited by this act.

26       (12) ~~—(11)—~~ Subsection (1) does not apply to a minor who  
27 participates in either or both of the following:

## Senate Bill No. 637 (H-2) as amended March 25, 2004

1 (a) An undercover operation in which the minor purchases or  
2 receives alcoholic liquor under the direction of the person's  
3 employer and with the prior approval of the local prosecutor's  
4 office as part of an employer-sponsored internal enforcement  
5 action.

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

13 ~~(13)~~ ~~—(12)—~~ The state police, the commission, or a local  
14 police agency shall not recruit or attempt to recruit a minor for  
15 participation in an undercover operation at the scene of a  
16 violation of subsection (1), section 801(2), or section 701(1).

**[(14) 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.**

17 **(15)]** As used in this section, "any bodily alcohol content"  
18 means either of the following:

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

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

26 Enacting section 1. This amendatory act takes effect  
27 September 1, 2004.

1           Enacting section 2. This amendatory act does not take  
2 effect unless House Bill No. 5120 of the 92nd Legislature is  
3 enacted into law.