

SENATE BILL No. 35

January 24, 2007, Introduced by Senator SWITALSKI and referred to the Committee on Judiciary.

A bill to amend 1998 PA 58, entitled
"Michigan liquor control code of 1998,"
by amending section 703 (MCL 436.1703), as amended by 2006 PA 443.

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 alcoholic
3 liquor, possess or attempt to possess alcoholic liquor, or have any
4 bodily alcohol content, except as provided in this section. A minor
5 who violates this subsection is guilty of a misdemeanor punishable
6 by the following fines and sanctions and is not subject to the
7 penalties prescribed in section 909:

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

9 (b) For a violation of this subsection following a prior
10 conviction or juvenile adjudication for a violation of this
11 subsection, section 33b(1) of former 1933 (Ex Sess) PA 8, or a
12 local ordinance substantially corresponding to this subsection or
13 section 33b(1) of former 1933 (Ex Sess) PA 8, by imprisonment for
14 not more than 30 days but only if the minor has been found by the
15 court to have violated an order of probation, failed to
16 successfully complete any treatment, screening, or community
17 service ordered by the court, or failed to pay any fine for that
18 conviction or juvenile adjudication, a fine of not more than
19 \$200.00, or both, and may be ordered to participate in substance
20 abuse prevention services or substance abuse treatment and
21 rehabilitation services as defined in section 6107 of the public
22 health code, 1978 PA 368, MCL 333.6107, and designated by the
23 administrator of substance abuse services, to perform community
24 service, and to undergo substance abuse screening and assessment at
25 his or her own expense as described in subsection (4).

26 (c) For a violation of this subsection following 2 or more
27 prior convictions or juvenile adjudications for a violation of this

1 subsection, section 33b(1) of former 1933 (Ex Sess) PA 8, or a
2 local ordinance substantially corresponding to this subsection or
3 section 33b(1) of former 1933 (Ex Sess) PA 8, by imprisonment for
4 not more than 60 days but only if the minor has been found by the
5 court to have violated an order of probation, failed to
6 successfully complete any treatment, screening, or community
7 service ordered by the court, or failed to pay any fine for that
8 conviction or juvenile adjudication, a fine of not more than
9 \$500.00, or both, and may be ordered to participate in substance
10 abuse prevention services or substance abuse treatment and
11 rehabilitation services as defined in section 6107 of the public
12 health code, 1978 PA 368, MCL 333.6107, and designated by the
13 administrator of substance abuse services, to perform community
14 service, and to undergo substance abuse screening and assessment at
15 his or her own expense as described in subsection (4).

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

21 (3) When an individual who has not previously been convicted
22 of or received a juvenile adjudication for a violation of
23 subsection (1) pleads guilty to a violation of subsection (1) or
24 offers a plea of admission in a juvenile delinquency proceeding for
25 a violation of subsection (1), the court, without entering a
26 judgment of guilt in a criminal proceeding or a determination in a
27 juvenile delinquency proceeding that the juvenile has committed the

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

1 the individual is on probation and if there is a discharge and
2 dismissal under this subsection. The secretary of state shall
3 retain a nonpublic record of a plea and of the discharge and
4 dismissal under this subsection. These records shall be furnished
5 to any of the following:

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

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

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

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

22 (4) The court may order the person convicted of violating
23 subsection (1) to undergo screening and assessment by a person or
24 agency as designated by the substance abuse coordinating agency as
25 defined in section 6103 of the public health code, 1978 PA 368, MCL
26 333.6103, in order to determine whether the person is likely to
27 benefit from rehabilitative services, including alcohol or drug

1 education and alcohol or drug treatment programs. The court may
2 order a person subject to a conviction or juvenile adjudication of,
3 or placed on probation regarding, a violation of subsection (1) to
4 submit to a random or regular preliminary chemical breath analysis.
5 In the case of a minor under 18 years of age not emancipated under
6 1968 PA 293, MCL 722.1 to 722.6, the parent, guardian, or custodian
7 may request a random or regular preliminary chemical breath
8 analysis as part of the probation.

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

13 (6) A peace officer who has reasonable cause to believe a
14 minor has consumed alcoholic liquor or has any bodily alcohol
15 content may ~~require~~**REQUEST** the person to submit to a preliminary
16 chemical breath analysis. **IF THE MINOR REFUSES THE REQUEST OF THE**
17 **PEACE OFFICE TO TAKE THE TEST, A TEST SHALL NOT BE GIVEN WITHOUT A**
18 **COURT ORDER.** A peace officer may arrest a person based in whole or
19 in part upon the results of a preliminary chemical breath analysis.
20 The results of a preliminary chemical breath analysis or other
21 acceptable blood alcohol test are admissible in a criminal
22 prosecution to determine whether the minor has consumed or
23 possessed alcoholic liquor or had any bodily alcohol content. ~~A~~
24 ~~minor who refuses to submit to a preliminary chemical breath test~~
25 ~~analysis as required in this subsection is responsible for a state~~
26 ~~civil infraction and may be ordered to pay a civil fine of not more~~
27 ~~than \$100.00.~~

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

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

26 (9) This section does not limit the civil or criminal
27 liability of the vendor or the vendor's clerk, servant, agent, or

1 employee for a violation of this act.

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

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

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

13 (a) An undercover operation in which the minor purchases or
14 receives alcoholic liquor under the direction of the person's
15 employer and with the prior approval of the local prosecutor's
16 office as part of an employer-sponsored internal enforcement
17 action.

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

25 (13) The state police, the commission, or a local police
26 agency shall not recruit or attempt to recruit a minor for
27 participation in an undercover operation at the scene of a

1 violation of subsection (1), ~~section 801(2), or section 701(1), OR~~
2 **SECTION 801(2)**.

3 (14) In a criminal prosecution for the violation of subsection
4 (1) concerning a minor having any bodily alcohol content, it is an
5 affirmative defense that the minor consumed the alcoholic liquor in
6 a venue or location where that consumption is legal.

7 (15) As used in this section, "any bodily alcohol content"
8 means either of the following:

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

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