

SENATE BILL No. 408

March 25, 2009, Introduced by Senators BRATER, JACOBS, CLARK-COLEMAN, SWITALSKI and GARCIA 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:

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

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

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

24 (c) For a violation of this subsection following 2 or more
25 prior convictions or juvenile adjudications for a violation of this
26 subsection, section 33b(1) of former 1933 (Ex Sess) PA 8, or a
27 local ordinance substantially corresponding to this subsection or

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

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

19 (3) When an individual who has not previously been convicted
20 of or received a juvenile adjudication for a violation of
21 subsection (1) pleads guilty to a violation of subsection (1) or
22 offers a plea of admission in a juvenile delinquency proceeding for
23 a violation of subsection (1), the court, without entering a
24 judgment of guilt in a criminal proceeding or a determination in a
25 juvenile delinquency proceeding that the juvenile has committed the
26 offense and with the consent of the accused, may defer further
27 proceedings and place the individual on probation upon terms and

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

1 retain a nonpublic record of a plea and of the discharge and
2 dismissal under this subsection. These records shall be furnished
3 to any of the following:

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

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

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

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

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

1 or placed on probation regarding, a violation of subsection (1) to
2 submit to a random or regular preliminary chemical breath analysis.
3 In the case of a minor under 18 years of age not emancipated under
4 1968 PA 293, MCL 722.1 to 722.6, the parent, guardian, or custodian
5 may request a random or regular preliminary chemical breath
6 analysis as part of the probation.

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

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

24 (7) A law enforcement agency, upon determining that a person
25 less than 18 years of age who is not emancipated under 1968 PA 293,
26 MCL 722.1 to 722.6, allegedly consumed, possessed, purchased
27 alcoholic liquor, attempted to consume, possess, or purchase

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

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

22 (9) A MINOR WHO HAS CONSUMED ALCOHOLIC LIQUOR AND WHO
23 VOLUNTARILY PRESENTS HIMSELF OR HERSELF TO A HEALTH FACILITY OR
24 AGENCY FOR TREATMENT OR FOR OBSERVATION, ANY OTHER MINOR WHO
25 ACCOMPANIES THAT MINOR, AND ANY MINOR WHO CONTACTS A PEACE OFFICER
26 OR EMERGENCY MEDICAL SERVICES PERSONNEL ARE NOT CONSIDERED IN
27 VIOLATION OF SUBSECTION (1).

1 (10) ~~(9)~~—This section does not limit the civil or criminal
2 liability of the vendor or the vendor's clerk, servant, agent, or
3 employee for a violation of this act.

4 (11) ~~(10)~~—The consumption of alcoholic liquor by a minor who
5 is enrolled in a course offered by an accredited postsecondary
6 educational institution in an academic building of the institution
7 under the supervision of a faculty member is not prohibited by this
8 act if the purpose of the consumption is solely educational and is
9 a requirement of the course.

10 (12) ~~(11)~~—The consumption by a minor of sacramental wine in
11 connection with religious services at a church, synagogue, or
12 temple is not prohibited by this act.

13 (13) ~~(12)~~—Subsection (1) does not apply to a minor who
14 participates in either or both of the following:

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

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

27 (14) ~~(13)~~—The state police, the commission, or a local police

1 agency shall not recruit or attempt to recruit a minor for
2 participation in an undercover operation at the scene of a
3 violation of subsection (1), section 801(2), or section 701(1).

4 (15) ~~(14)~~—In a criminal prosecution for the violation of
5 subsection (1) concerning a minor having any bodily alcohol
6 content, it is an affirmative defense that the minor consumed the
7 alcoholic liquor in a venue or location where that consumption is
8 legal.

9 (16) ~~(15)~~—As used in this section: ~~—"any~~

10 (A) **ANY** bodily alcohol content" means either of the following:

11 (i) ~~(a)~~—An alcohol content of 0.02 grams or more per 100
12 milliliters of blood, per 210 liters of breath, or per 67
13 milliliters of urine.

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

18 (B) **"EMERGENCY MEDICAL SERVICES PERSONNEL" MEANS THAT TERM AS**
19 **DEFINED IN SECTION 20904 OF THE PUBLIC HEALTH CODE, 1978 PA 368,**
20 **MCL 333.20904.**

21 (C) **"HEALTH FACILITY OR AGENCY" MEANS THAT TERM AS DEFINED IN**
22 **SECTION 20106 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL**
23 **333.20106.**