

# SENATE BILL No. 902

October 15, 2009, 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 ~~AS APPLICABLE, OR A STATE CIVIL INFRACTION AND MAY BE ORDERED TO~~  
7       PAY the following fines and sanctions, IS SUBJECT TO THE FOLLOWING,  
8       and is not subject to the penalties prescribed in section 909:

9       (a) For the first violation a fine of not more than \$100.00,

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

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

25 (c) For a violation of this subsection following 2 or more  
26 prior convictions **OR FINDINGS OF RESPONSIBILITY** or juvenile  
27 adjudications for a violation of this subsection, section 33b(1) of

former 1933 (Ex Sess) PA 8, or a local ordinance substantially corresponding to this subsection or section 33b(1) of former 1933 (Ex Sess) PA 8, by imprisonment for not more than 60 days but only if the minor has been found by 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 **FINDING OF RESPONSIBILITY**, conviction, or juvenile adjudication, a fine of not more than \$500.00, or both, and may be ordered to participate in substance abuse prevention services or substance abuse treatment and rehabilitation services as defined in section 6107 of the public health code, 1978 PA 368, MCL 333.6107, and designated by the administrator of substance abuse services, to perform community service, and to undergo substance abuse screening and assessment at his or her own expense as described in subsection (4).

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

(3) When an individual who has not previously been ~~convicted~~ ~~of~~ **FOUND RESPONSIBLE FOR** or received a juvenile adjudication for a violation of subsection (1) ~~pleads guilty to~~ **ADMITS RESPONSIBILITY** **FOR** a violation of subsection (1) or offers a plea of admission in a juvenile delinquency proceeding for a violation of subsection (1), the court, without entering a ~~judgment of guilt in a criminal proceeding~~ **FINDING OF RESPONSIBILITY** or a determination in a

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

1 discharge and dismissal under this subsection as to an individual.  
2 The court shall maintain a nonpublic record of the matter while  
3 proceedings are deferred and the individual is on probation and if  
4 there is a discharge and dismissal under this subsection. The  
5 secretary of state shall retain a nonpublic record of a plea **OR**  
6 **FINDING** and of the discharge and dismissal under this subsection.  
7 These records shall be furnished to any of the following:

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

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

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

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

24 (4) The court may order the person convicted of **OR FOUND**  
25 **RESPONSIBLE FOR** violating subsection (1) to undergo screening and  
26 assessment by a person or agency as designated by the substance  
27 abuse coordinating agency as defined in section 6103 of the public

1 health code, 1978 PA 368, MCL 333.6103, in order to determine  
2 whether the person is likely to benefit from rehabilitative  
3 services, including alcohol or drug education and alcohol or drug  
4 treatment programs. The court may order a person subject to a  
5 conviction **OR FINDING OF RESPONSIBILITY** or juvenile adjudication  
6 of, or placed on probation regarding, a violation of subsection (1)  
7 to submit to a random or regular preliminary chemical breath  
8 analysis. In the case of a minor under 18 years of age not  
9 emancipated under 1968 PA 293, MCL 722.1 to 722.6, the parent,  
10 guardian, or custodian may request a random or regular preliminary  
11 chemical breath analysis as part of the probation.

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

16 (6) A peace officer who has reasonable cause to believe a  
17 minor has consumed alcoholic liquor or has any bodily alcohol  
18 content may require the person to submit to a preliminary chemical  
19 breath analysis. A peace officer may arrest a person based in whole  
20 or in part upon the results of a preliminary chemical breath  
21 analysis. The results of a preliminary chemical breath analysis or  
22 other acceptable blood alcohol test are admissible in a criminal  
23 prosecution **OR STATE CIVIL INFRACTION PROCEEDING** to determine  
24 whether the minor has consumed or possessed alcoholic liquor or had  
25 any bodily alcohol content. A minor who refuses to submit to a  
26 preliminary chemical breath test analysis as required in this  
27 subsection is responsible for a state civil infraction and may be

1 ordered to pay a civil fine of not more than \$100.00.

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

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

27 (9) This section does not limit the civil or criminal

1 liability of the vendor or the vendor's clerk, servant, agent, or  
2 employee for a violation of this act.

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

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

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

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

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

26 (13) The state police, the commission, or a local police  
27 agency shall not recruit or attempt to recruit a minor for



1 participation in an undercover operation at the scene of a  
2 violation of subsection (1), section 801(2), or section 701(1).

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

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

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

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