

HOUSE BILL No. 4393

March 8, 2011, Introduced by Reps. Forlini, Lori, Wayne Schmidt, Haines, Tyler, Huuki, Agema, Moss, Franz, Lane, Smiley, Lund, Ananich, Byrum, Liss and Haugh 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 **BY** a fine of not more than
9 \$100.00. ~~7 and may be ordered~~ **A COURT MAY ORDER A MINOR UNDER THIS**
10 **SUBDIVISION** to participate in substance abuse prevention services

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

8 (b) For a violation of this subsection following a prior
9 conviction or juvenile adjudication for a violation of this
10 subsection, section 33b(1) of former 1933 (Ex Sess) PA 8, or a
11 local ordinance substantially corresponding to this subsection or
12 section 33b(1) of former 1933 (Ex Sess) PA 8, by imprisonment for
13 not more than 30 days but only if the ~~minor has been found by the~~
14 ~~court to have~~ **FINDS THAT THE MINOR** 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, **BY** a fine of not more
18 than \$200.00, or both. ~~, and may be ordered~~ **A COURT MAY ORDER A**
19 **MINOR UNDER THIS SUBDIVISION** to participate in substance abuse
20 prevention services or substance abuse treatment and rehabilitation
21 services as defined in section 6107 of the public health code, 1978
22 PA 368, MCL 333.6107, and designated by the administrator of **THE**
23 **OFFICE OF** substance abuse services, to perform community service,
24 and to undergo substance abuse screening and assessment at his or
25 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~~ **FINDS THAT THE MINOR** violated an order of probation,
6 failed to successfully complete any treatment, screening, or
7 community service ordered by the court, or failed to pay any fine
8 for that conviction or juvenile adjudication, **BY** a fine of not more
9 than \$500.00, or both. ~~, and may be ordered~~ **A COURT MAY ORDER A**
10 **MINOR UNDER THIS SUBDIVISION** to participate in substance abuse
11 prevention services or substance abuse treatment and rehabilitation
12 services as defined in section 6107 of the public health code, 1978
13 PA 368, MCL 333.6107, and designated by the administrator of **THE**
14 **OFFICE OF** substance abuse services, to perform community service,
15 and to undergo substance abuse screening and assessment at his or
16 her own expense as described in subsection (4).

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

22 (3) When an individual who has not previously been convicted
23 of or received a juvenile adjudication for a violation of
24 subsection (1) pleads guilty to a violation of subsection (1) or
25 offers a plea of admission in a juvenile delinquency proceeding for
26 a violation of subsection (1), the court, without entering a
27 judgment of guilt in a criminal proceeding 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~~ **THE** terms
4 and conditions **OF** that **PROBATION** include, but are not limited to,
5 the sanctions set forth in subsection (1)(a), payment of the costs
6 including minimum state cost as provided for in section 18m of
7 chapter XIIIA of the probate code of 1939, 1939 PA 288, MCL
8 712A.18m, and section 1j of chapter IX of the code of criminal
9 procedure, 1927 PA 175, MCL 769.1j, and the costs of probation as
10 prescribed in section 3 of chapter XI of the code of criminal
11 procedure, 1927 PA 175, MCL 771.3. ~~Upon violation of~~ **IF A COURT**
12 **FINDS THAT AN INDIVIDUAL VIOLATED** a term or condition of probation
13 or ~~upon a finding~~ that the individual is utilizing this subsection
14 in another court, the court may enter an adjudication of guilt, or
15 a determination in a juvenile delinquency proceeding that the
16 individual has committed the offense, and proceed as otherwise
17 provided by law. ~~Upon fulfillment of~~ **IF AN INDIVIDUAL FULFILLS** the
18 terms and conditions of probation, the court shall discharge the
19 individual and dismiss the proceedings. Discharge and dismissal
20 under this section shall be without adjudication of guilt or
21 without a determination in a juvenile delinquency proceeding that
22 the individual has committed the offense and is not a conviction 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 or juvenile adjudications under
27 subsection (1)(b) and (c). ~~There may be~~ **AN INDIVIDUAL MAY OBTAIN**

1 only 1 discharge and dismissal under this subsection. ~~as to an~~
2 ~~individual.~~ The court shall maintain a nonpublic record of the
3 matter while proceedings are deferred and the individual is on
4 probation and if there is a discharge and dismissal under this
5 subsection. The secretary of state shall retain a nonpublic record
6 of a plea 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~~ **A** court may order ~~the person~~ **AN INDIVIDUAL** convicted
25 of violating subsection (1) to undergo screening and assessment by
26 a person or agency as designated by the substance abuse
27 coordinating agency as defined in section 6103 of the public health

1 code, 1978 PA 368, MCL 333.6103, in order to determine whether the
2 ~~person~~**INDIVIDUAL** is likely to benefit from rehabilitative
3 services, including alcohol or drug education and alcohol or drug
4 treatment programs. ~~The~~**A** court may order ~~a person~~**AN INDIVIDUAL**
5 subject to a conviction or juvenile adjudication of, or placed on
6 probation regarding, a violation of subsection (1) to submit to a
7 random or regular preliminary chemical breath analysis. ~~In the case~~
8 **THE PARENT, GUARDIAN, OR CUSTODIAN** of a minor under 18 years of age
9 not 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~~**THAT INDIVIDUAL** to submit to a
19 preliminary chemical breath analysis. A peace officer may arrest a
20 ~~person~~**AN INDIVIDUAL** based in whole or in part upon the results of
21 a preliminary chemical breath analysis. The results of a
22 preliminary chemical breath analysis or other acceptable blood
23 alcohol test are admissible in a criminal prosecution 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 **AN INDIVIDUAL** less than 18 years of age who is not emancipated
4 under 1968 PA 293, MCL 722.1 to 722.6, allegedly consumed,
5 possessed, purchased alcoholic liquor, attempted to consume,
6 possess, or purchase alcoholic liquor, or had any bodily alcohol
7 content in violation of subsection (1) shall notify the parent or
8 parents, custodian, or guardian of the ~~person~~**INDIVIDUAL** as to the
9 nature of the violation if the name of a parent, guardian, or
10 custodian is reasonably ascertainable by the law enforcement
11 agency. ~~The notice required by this subsection shall be made~~**LAW**
12 **ENFORCEMENT AGENCY SHALL NOTIFY THE PARENT, GUARDIAN, OR CUSTODIAN**
13 not later than 48 hours after the law enforcement agency determines
14 that the ~~person~~**INDIVIDUAL** who allegedly violated subsection (1) is
15 less than 18 years of age and not emancipated under 1968 PA 293,
16 MCL 722.1 to 722.6. ~~The notice may be made~~**LAW ENFORCEMENT AGENCY**
17 **MAY NOTIFY THE PARENT, GUARDIAN, OR CUSTODIAN** by any means
18 reasonably calculated to give prompt actual notice including, but
19 not limited to, notice in person, by telephone, or by first-class
20 mail. If an individual less than 17 years of age is incarcerated
21 for violating subsection (1), his or her parents or legal guardian
22 shall be notified immediately as provided in this subsection.

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

1 consumption.

2 (9) A MINOR WHO HAS CONSUMED ALCOHOLIC LIQUOR AND WHO
3 VOLUNTARILY PRESENTS HIMSELF OR HERSELF TO A HEALTH FACILITY OR
4 AGENCY FOR TREATMENT OR FOR OBSERVATION, ANY MINOR WHO ACCOMPANIES
5 AN INDIVIDUAL WHO HAS CONSUMED ALCOHOLIC LIQUOR AND WHO VOLUNTARILY
6 PRESENTS HIMSELF OR HERSELF TO A HEALTH FACILITY OR AGENCY FOR
7 TREATMENT OR FOR OBSERVATION, AND ANY MINOR WHO INITIATES CONTACT
8 WITH A PEACE OFFICER OR EMERGENCY MEDICAL SERVICES PERSONNEL FOR
9 THE PURPOSE OF OBTAINING MEDICAL ASSISTANCE ARE NOT CONSIDERED IN
10 VIOLATION OF SUBSECTION (1).

11 (10) ~~(9)~~—This section does not limit the civil or criminal
12 liability of the vendor or the vendor's clerk, servant, agent, or
13 employee for a violation of this act.

14 (11) ~~(10)~~—The consumption of alcoholic liquor by a minor who
15 is enrolled in a course offered by an accredited postsecondary
16 educational institution in an academic building of the institution
17 under the supervision of a faculty member is not prohibited by this
18 act if the purpose of the consumption is solely educational and is
19 a requirement of the course.

20 (12) ~~(11)~~—The consumption by a minor of sacramental wine in
21 connection with religious services at a church, synagogue, or
22 temple is not prohibited by this act.

23 (13) ~~(12)~~—Subsection (1) does not apply to a minor who
24 participates in either or both of the following:

25 (a) An undercover operation in which the minor purchases or
26 receives alcoholic liquor under the direction of the person's
27 employer and with the prior approval of the local prosecutor's

1 office as part of an employer-sponsored internal enforcement
2 action.

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

10 (14) ~~(13)~~—The state police, the commission, or a local police
11 agency shall not recruit or attempt to recruit a minor for
12 participation in an undercover operation at the scene of a
13 violation of subsection (1), **SECTION 701(1), OR** section 801(2). ~~7~~
14 ~~or section 701(1).~~

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

20 (16) ~~(15)~~—As used in this section: ~~7~~—~~"any~~

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

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

26 (ii) ~~(b)~~—Any presence of alcohol within a person's body
27 resulting from the consumption of alcoholic liquor, other than

1 consumption of alcoholic liquor as a part of a generally recognized
2 religious service or ceremony.

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

6 (C) "HEALTH FACILITY OR AGENCY" MEANS THAT TERM AS DEFINED IN
7 SECTION 20106 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL
8 333.20106.