

HOUSE BILL No. 4213

February 15, 2017, Introduced by Rep. Lucido and referred to the Committee on Law and Justice.

A bill to amend 1998 PA 58, entitled
"Michigan liquor control code of 1998,"
by amending section 703 (MCL 436.1703), as amended by 2016 PA 357.

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 responsible for a state civil
6 infraction or guilty of a misdemeanor as follows and is not subject
7 to the penalties prescribed in section 909:

8 (a) For the first violation, the minor is responsible for a
9 state civil infraction and shall be fined not more than \$100.00. A
10 court may order a minor under this subdivision to participate in
11 substance use disorder services as defined in section 6230 of the

1 public health code, 1978 PA 368, MCL 333.6230, and designated by
2 the administrator of the office of substance abuse services, and
3 may order the minor to perform community service and to undergo
4 substance abuse screening and assessment at his or her own expense
5 as described in subsection (5). A minor may be found responsible or
6 admit responsibility only once under this subdivision.

7 (b) If a violation of this subsection occurs after 1 prior
8 judgment, the minor is guilty of a misdemeanor. A misdemeanor under
9 this subdivision is punishable by imprisonment for not more than 30
10 days if the court finds that the minor violated an order of
11 probation, failed to successfully complete any treatment,
12 screening, or community service ordered by the court, or failed to
13 pay any fine for that conviction or juvenile adjudication, **OR** by a
14 fine of not more than \$200.00, or both. A court may order a minor
15 under this subdivision to participate in substance use disorder
16 services as defined in section 6230 of the public health code, 1978
17 PA 368, MCL 333.6230, and designated by the administrator of the
18 office of substance abuse services, to perform community service,
19 and to undergo substance abuse screening and assessment at his or
20 her own expense as described in subsection (5).

21 (c) If a violation of this subsection occurs after 2 or more
22 prior judgments, the minor is guilty of a misdemeanor. A
23 misdemeanor under this subdivision is punishable by imprisonment
24 for not more than 60 days, if the court finds that the minor
25 violated an order of probation, failed to successfully complete any
26 treatment, screening, or community service ordered by the court, or
27 failed to pay any fine for that conviction or juvenile

1 adjudication, **OR** by a fine of not more than \$500.00, or both, as
2 applicable. A court may order a minor under this subdivision to
3 participate in substance use disorder services as defined in
4 section 6230 of the public health code, 1978 PA 368, MCL 333.6230,
5 and designated by the administrator of the office of substance
6 abuse services, to perform community service, and to undergo
7 substance abuse screening and assessment at his or her own expense
8 as described in subsection (5).

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

14 (3) If an individual who pleads guilty to a misdemeanor
15 violation of subsection (1)(b) or offers a plea of admission in a
16 juvenile delinquency proceeding for a misdemeanor violation of
17 subsection (1)(b), the court, without entering a judgment of guilt
18 in a criminal proceeding or a determination in a juvenile
19 delinquency proceeding that the juvenile has committed the offense
20 and with the consent of the accused, may defer further proceedings
21 and place the individual on probation. The terms and conditions of
22 that probation include, but are not limited to, the sanctions set
23 forth in subsection (1)(c), payment of the costs including minimum
24 state cost as provided for in section 18m of chapter XIIA of the
25 probate code of 1939, 1939 PA 288, MCL 712A.18m, and section 1j of
26 chapter IX of the code of criminal procedure, 1927 PA 175, MCL
27 769.1j, and the costs of probation as prescribed in section 3 of

chapter XI of the code of criminal procedure, 1927 PA 175, MCL 771.3. If a court finds that an individual violated a term or condition of probation or that the individual is utilizing this subsection in another court, the court may enter an adjudication of guilt, or a determination in a juvenile delinquency proceeding that the individual has committed the offense, and proceed as otherwise provided by law. If an individual fulfills the terms and conditions of probation, the court shall discharge the individual and dismiss the proceedings. A discharge and dismissal under this section is without adjudication of guilt or without a determination in a juvenile delinquency proceeding that the individual has committed the offense and is not a conviction or juvenile adjudication for purposes of disqualifications or disabilities imposed by law on conviction of a crime. An individual may obtain only 1 discharge and dismissal under this subsection. The court shall maintain a nonpublic record of the matter while proceedings are deferred and the individual is on probation and if there is a discharge and dismissal under this subsection. The secretary of state shall retain a nonpublic record of a plea and of the discharge and dismissal under this subsection. These records shall be furnished to any of the following:

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

(b) To the department of corrections, a prosecutor, or a law enforcement agency, on the department's, a prosecutor's, or a law enforcement agency's request, subject to all of the following

1 conditions:

2 (i) At the time of the request, the individual is an employee
3 of the department of corrections, the prosecutor, or the law
4 enforcement agency, or an applicant for employment with the
5 department of corrections, the prosecutor, or the law enforcement
6 agency.

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

11 (4) A misdemeanor violation of subsection (1) successfully
12 deferred, discharged, and dismissed under subsection (3) is
13 considered a prior judgment for the purposes of subsection (1)(c).

14 (5) A court may order an individual found responsible for or
15 convicted of violating subsection (1) to undergo screening and
16 assessment by a person or agency as designated by the department-
17 designated community mental health entity as defined in section
18 100a of the mental health code, 1974 PA 258, MCL 330.1100a, to
19 determine whether the individual is likely to benefit from
20 rehabilitative services, including alcohol or drug education and
21 alcohol or drug treatment programs. A court may order an individual
22 subject to a misdemeanor conviction or juvenile adjudication of, or
23 placed on probation regarding, a violation of subsection (1) to
24 submit to a random or regular preliminary chemical breath analysis.
25 The parent, guardian, or custodian of a minor who is less than 18
26 years of age and not emancipated under 1968 PA 293, MCL 722.1 to
27 722.6, may request a random or regular preliminary chemical breath

1 analysis as part of the probation.

2 (6) The secretary of state shall suspend the operator's or
3 chauffeur's license of an individual convicted of a second or
4 subsequent violation of subsection (1) or of violating subsection
5 (2) as provided in section 319 of the Michigan vehicle code, 1949
6 PA 300, MCL 257.319.

7 (7) A peace officer who has reasonable cause to believe a
8 minor has consumed alcoholic liquor or has any bodily alcohol
9 content may request that individual to submit to a preliminary
10 chemical breath analysis. **IF A MINOR DOES NOT CONSENT TO A**
11 **PRELIMINARY CHEMICAL BREATH ANALYSIS, THE ANALYSIS SHALL NOT BE**
12 **ADMINISTERED WITHOUT A COURT ORDER, BUT A PEACE OFFICER MAY SEEK TO**
13 **OBTAIN A COURT ORDER.** The results of a preliminary chemical breath
14 analysis or other acceptable blood alcohol test are admissible in a
15 state civil infraction proceeding or criminal prosecution to
16 determine if the minor has consumed or possessed alcoholic liquor
17 or had any bodily alcohol content.

18 (8) A law enforcement agency, on determining that an
19 individual who is less than 18 years of age and not emancipated
20 under 1968 PA 293, MCL 722.1 to 722.6, allegedly consumed,
21 possessed, or purchased alcoholic liquor, attempted to consume,
22 possess, or purchase alcoholic liquor, or had any bodily alcohol
23 content in violation of subsection (1) shall notify the parent or
24 parents, custodian, or guardian of the individual as to the nature
25 of the violation if the name of a parent, guardian, or custodian is
26 reasonably ascertainable by the law enforcement agency. The law
27 enforcement agency shall notify the parent, guardian, or custodian

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

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

17 (10) The following individuals are not considered to be in
18 violation of subsection (1):

19 (a) A minor who has consumed alcoholic liquor and who
20 voluntarily presents himself or herself to a health facility or
21 agency for treatment or for observation including, but not limited
22 to, medical examination and treatment for any condition arising
23 from a violation of sections 520b to 520g of the Michigan penal
24 code, 1931 PA 328, MCL 750.520b to 750.520g, committed against a
25 minor.

26 (b) A minor who accompanies an individual who meets both of
27 the following criteria:

1 (i) Has consumed alcoholic liquor.

2 (ii) Voluntarily presents himself or herself to a health
3 facility or agency for treatment or for observation including, but
4 not limited to, medical examination and treatment for any condition
5 arising from a violation of sections 520b to 520g of the Michigan
6 penal code, 1931 PA 328, MCL 750.520b to 750.520g, committed
7 against a minor.

8 (c) A minor who initiates contact with a peace officer or
9 emergency medical services personnel for the purpose of obtaining
10 medical assistance for a legitimate health care concern.

11 (11) If a minor who is less than 18 years of age and who is
12 not emancipated under 1968 PA 293, MCL 722.1 to 722.6, voluntarily
13 presents himself or herself to a health facility or agency for
14 treatment or for observation as provided under subsection (10), the
15 health facility or agency shall notify the parent or parents,
16 guardian, or custodian of the individual as to the nature of the
17 treatment or observation if the name of a parent, guardian, or
18 custodian is reasonably ascertainable by the health facility or
19 agency.

20 (12) This section does not limit the civil or criminal
21 liability of a vendor or the vendor's clerk, servant, agent, or
22 employee for a violation of this act.

23 (13) The consumption of alcoholic liquor by a minor who is
24 enrolled in a course offered by an accredited postsecondary
25 educational institution in an academic building of the institution
26 under the supervision of a faculty member is not prohibited by this
27 act if the purpose of the consumption is solely educational and is

1 a requirement of the course.

2 (14) The consumption by a minor of sacramental wine in
3 connection with religious services at a church, synagogue, or
4 temple is not prohibited by this act.

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

7 (a) An undercover operation in which the minor purchases or
8 receives alcoholic liquor under the direction of the person's
9 employer and with the prior approval of the local prosecutor's
10 office as part of an employer-sponsored internal enforcement
11 action.

12 (b) An undercover operation in which the minor purchases or
13 receives alcoholic liquor under the direction of the state police,
14 the commission, or a local police agency as part of an enforcement
15 action unless the initial or contemporaneous purchase or receipt of
16 alcoholic liquor by the minor was not under the direction of the
17 state police, the commission, or the local police agency and was
18 not part of the undercover operation.

19 (16) The state police, the commission, or a local police
20 agency shall not recruit or attempt to recruit a minor for
21 participation in an undercover operation at the scene of a
22 violation of subsection (1), section 701(1), or section 801(2).

23 (17) In a prosecution for the violation of subsection (1)
24 concerning a minor having any bodily alcohol content, it is an
25 affirmative defense that the minor consumed the alcoholic liquor in
26 a venue or location where that consumption is legal.

27 (18) As used in this section:

1 (a) "Any bodily alcohol content" means either of the
2 following:

3 (i) An alcohol content of 0.02 grams or more per 100
4 milliliters of blood, per 210 liters of breath, or per 67
5 milliliters of urine.

6 (ii) Any presence of alcohol within a person's body resulting
7 from the consumption of alcoholic liquor, other than consumption of
8 alcoholic liquor as a part of a generally recognized religious
9 service or ceremony.

10 (b) "Emergency medical services personnel" means that term as
11 defined in section 20904 of the public health code, 1978 PA 368,
12 MCL 333.20904.

13 (c) "Health facility or agency" means that term as defined in
14 section 20106 of the public health code, 1978 PA 368, MCL
15 333.20106.

16 (d) "Prior judgment" means a conviction, juvenile
17 adjudication, finding of responsibility, or admission of
18 responsibility for any of the following, whether under a law of
19 this state, a local ordinance substantially corresponding to a law
20 of this state, a law of the United States substantially
21 corresponding to a law of this state, or a law of another state
22 substantially corresponding to a law of this state:

23 (i) This section or section 701 or 707.

24 (ii) Section 624a, 624b, or 625 of the Michigan vehicle code,
25 1949 PA 300, MCL 257.624a, 257.624b, and 257.625.

26 (iii) Section 80176, 81134, or 82127 of the natural resources
27 and environmental protection act, 1994 PA 451, MCL 324.80176,

1 324.81134, and 324.82127.

2 (iv) Section 167a or 237 of the Michigan penal code, 1939 PA
3 328, MCL 750.167a and 750.237.

4 Enacting section 1. This amendatory act takes effect 90 days
5 after the date it is enacted into law.