

HOUSE BILL No. 4939

September 13, 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 2017 PA 89.

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

1 substance use disorder services as defined in section 6230 of the
2 public health code, 1978 PA 368, MCL 333.6230, and designated by
3 the administrator of the office of substance abuse services, and
4 may order the minor to perform community service and to undergo
5 substance abuse screening and assessment at his or her own expense
6 as described in subsection (5). A minor may be found responsible or
7 admit responsibility only once under this subdivision.

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

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

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

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

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

1 769.1j, and the costs of probation as prescribed in section 3 of
2 chapter XI of the code of criminal procedure, 1927 PA 175, MCL
3 771.3. If a court finds that an individual violated a term or
4 condition of probation or that the individual is utilizing this
5 subsection in another court, the court may enter an adjudication of
6 guilt, or a determination in a juvenile delinquency proceeding that
7 the individual has committed the offense, and proceed as otherwise
8 provided by law. If an individual fulfills the terms and conditions
9 of probation, the court shall discharge the individual and dismiss
10 the proceedings. A discharge and dismissal under this section is
11 without adjudication of guilt or without a determination in a
12 juvenile delinquency proceeding that the individual has committed
13 the offense and is not a conviction or juvenile adjudication for
14 purposes of disqualifications or disabilities imposed by law ~~on~~ **FOR**
15 conviction of a crime. An individual may obtain only 1 discharge
16 and dismissal under this subsection. The court shall maintain a
17 nonpublic record of the matter while proceedings are deferred and
18 the individual is on probation and if there is a discharge and
19 dismissal under this subsection. The secretary of state shall
20 retain a nonpublic record of a plea and of the discharge and
21 dismissal under this subsection. These records shall be furnished
22 to any of the following:

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

26 (b) To the department of corrections, a prosecutor, or a law
27 enforcement agency, on the department's, a prosecutor's, or a law

1 enforcement agency's request, subject to all of the following
2 conditions:

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

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

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

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

1 722.6, may request a random or regular preliminary chemical breath
2 analysis as part of the probation.

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

8 (7) A peace officer who has reasonable cause to believe a
9 minor has consumed alcoholic liquor or has any bodily alcohol
10 content may request that individual to submit to a preliminary
11 chemical breath analysis. If a minor does not consent to a
12 preliminary chemical breath analysis, the analysis ~~shall~~**MUST** not
13 be administered without a court order, but a peace officer may seek
14 to obtain a court order. The results of a preliminary chemical
15 breath analysis or other acceptable blood alcohol test are
16 admissible in a state civil infraction proceeding or criminal
17 prosecution to determine if the minor has consumed or possessed
18 alcoholic liquor or had any bodily alcohol content.

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

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

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

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

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

27 (b) A minor who accompanies an individual who meets both of

1 the following criteria:

2 (i) Has consumed alcoholic liquor.

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

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

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

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

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

1 act if the purpose of the consumption is solely educational and is
2 a requirement of the course.

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

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

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

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

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

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

1 (18) As used in this section:

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

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

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

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

14 (c) "Health facility or agency" means that term as defined in
15 section 20106 of the public health code, 1978 PA 368, MCL
16 333.20106.

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

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

25 (ii) Section 624a, 624b, or 625 of the Michigan vehicle code,
26 1949 PA 300, MCL 257.624a, 257.624b, and 257.625.

27 (iii) Section 80176, 81134, or 82127 of the natural resources

1 and environmental protection act, 1994 PA 451, MCL 324.80176,
 2 324.81134, and 324.82127.

3 (iv) Section 167a or 237 of the Michigan penal code, ~~1939~~**1931**
 4 PA 328, MCL 750.167a and 750.237.

5 Enacting section 1. This amendatory act takes effect January
 6 1, 2018.