

HOUSE BILL NO. 5847

June 11, 2020, Introduced by Reps. Meerman, Yancey, Stone, Lasinski, Bolden, Hood, Hope, Whitsett, Tyrone Carter, Sneller, Sabo, Warren, Sowerby, Cambensy, Clemente, Manoogian, Kupp, Hoadley, Gay-Dagnogo, Guerra, Brann, O'Malley, Wozniak, Brixie, Peterson, Ellison, Wittenberg, Hammoud, Kennedy and Cynthia Johnson and referred to the Committee on Judiciary.

A bill to amend 1998 PA 58, entitled
"Michigan liquor control code of 1998,"
by amending sections 701 and 703 (MCL 436.1701 and 436.1703),
section 701 as amended by 2020 PA 78 and section 703 as amended by
2019 PA 131.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 701. (1) A person shall not sell or furnish alcoholic
- 2 liquor to a minor. Except as otherwise provided in subsection (2)
- 3 and subject to subsections (4), (5), and (6), a person who



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1 knowingly sells or furnishes alcoholic liquor to a minor, or who
2 fails to make diligent inquiry as to whether the individual is a
3 minor, is guilty of a misdemeanor. A retail licensee or a retail
4 licensee's clerk, agent, or employee who violates this subsection
5 shall be punished in the manner provided for licensees in section
6 909 except that if the violation is the result of an undercover
7 operation in which the minor received alcoholic liquor under the
8 direction of the state police, the commission, or a local police
9 agency as part of an enforcement action, the retail licensee's
10 clerk, agent, or employee is responsible for a state civil
11 infraction and may be ordered to pay a civil fine of not more than
12 \$100.00. Except as otherwise provided in subsection (2), an
13 individual who is not a retail licensee or a retail licensee's
14 clerk, agent, or employee and who violates this subsection is
15 guilty of a misdemeanor punishable by a fine of not more than
16 \$1,000.00 and imprisonment for not more than 60 days for a first
17 offense, a fine of not more than \$2,500.00 and imprisonment for not
18 more than 90 days for a second or subsequent offense, and may be
19 ordered to perform community service. ~~For a second or subsequent~~
20 ~~offense, the secretary of state shall suspend the operator's or~~
21 ~~chauffeur's license of an individual who is not a retail licensee~~
22 ~~or retail licensee's clerk, agent, or employee and who is convicted~~
23 ~~of violating this subsection as provided in section 319 of the~~
24 ~~Michigan vehicle code, 1949 PA 300, MCL 257.319.~~ A suitable sign
25 describing the content of this section and the penalties for its
26 violation must be posted in a conspicuous place in each room where
27 alcoholic liquor is sold. The commission shall approve and furnish
28 a sign under this section.

29 (2) An individual who is not a retail licensee or the retail

1 licensee's clerk, agent, or employee and who violates subsection
2 (1) is guilty of a felony, punishable by imprisonment for not more
3 than 10 years or a fine of not more than \$5,000.00, or both, if the
4 subsequent consumption of the alcoholic liquor by the minor is a
5 direct and substantial cause of the minor's death or an accidental
6 injury that causes the minor's death.

7 (3) If a violation occurs in an establishment that is licensed
8 by the commission for consumption of alcoholic liquor on the
9 licensed premises, a person who is a licensee or the clerk, agent,
10 or employee of a licensee must not be charged with a violation of
11 subsection (1) or section 801(1) unless the licensee or the clerk,
12 agent, or employee of the licensee knew or should have reasonably
13 known with the exercise of due diligence that a minor possessed or
14 consumed alcoholic liquor on the licensed premises and the licensee
15 or clerk, agent, or employee of the licensee failed to take
16 immediate corrective action.

17 (4) If the enforcing agency involved in the violation is the
18 state police or a local police agency, a licensee must not be
19 charged with a violation of subsection (1) or section 801(1) unless
20 all of the following occur, if applicable:

21 (a) Enforcement action is taken against the minor who
22 purchased or attempted to purchase, consumed or attempted to
23 consume, or possessed or attempted to possess alcoholic liquor.

24 (b) Enforcement action is taken under this section against the
25 individual 21 years of age or older who is not the retail licensee
26 or the retail licensee's clerk, agent, or employee who sold or
27 furnished the alcoholic liquor to the minor.

28 (c) Enforcement action under this section is taken against the
29 clerk, agent, or employee who directly sold or furnished alcoholic



1 liquor to the minor.

2 (5) If the enforcing agency is the commission and an
3 appearance ticket or civil infraction citation has not been issued,
4 then the commission shall recommend to a local law enforcement
5 agency that enforcement action be taken against a violator of this
6 section or section 703 who is not a licensee. However, subsection
7 (4) does not apply if the minor against whom enforcement action is
8 taken under section 703, the clerk, agent, or employee of the
9 licensee who directly sold or furnished alcoholic liquor to the
10 minor, or the individual 21 years of age or older who sold or
11 furnished alcoholic liquor to the minor is not alive or is not
12 present in this state at the time the licensee is charged.
13 Subsection (4) (a) does not apply under either of the following
14 circumstances:

15 (a) The violation of subsection (1) is the result of an
16 undercover operation in which the minor purchased or received
17 alcoholic liquor under the direction of the person's employer and
18 with the prior approval of the local prosecutor's office as part of
19 an employer-sponsored internal enforcement action.

20 (b) The violation of subsection (1) is the result of an
21 undercover operation in which the minor purchased or received
22 alcoholic liquor under the direction of the state police, the
23 commission, or a local police agency as part of an enforcement
24 action.

25 (6) Any initial or contemporaneous purchase or receipt of
26 alcoholic liquor by the minor under subsection (5) (a) or (b) must
27 have been under the direction of the state police, the commission,
28 or the local police agency and must have been part of the
29 undercover operation.



1 (7) If a minor participates in an undercover operation in
2 which the minor is to purchase or receive alcoholic liquor under
3 the supervision of a law enforcement agency, his or her parents or
4 legal guardian shall consent to the participation if the minor is
5 less than 18 years of age.

6 (8) In an action for the violation of this section, proof that
7 the defendant or the defendant's agent or employee demanded and was
8 shown, before furnishing alcoholic liquor to a minor, a motor
9 vehicle operator's or chauffeur's license, a military
10 identification card, or other bona fide documentary evidence of the
11 age and identity of that person, is a defense to an action brought
12 under this section.

13 (9) The commission shall provide, on an annual basis, a
14 written report to the department of state police as to the number
15 of actions heard by the commission involving violations of this
16 section and section 801(1). The commission shall include in the
17 report the disposition of each action and figures representing all
18 of the following categories:

19 (a) Decoy operations.

20 (b) Off-premises violations.

21 (c) On-premises violations.

22 (d) Repeat offenses within the 3 years preceding the date of
23 the report.

24 (10) Subsection (11)(b)(ii) does not impose a duty or
25 obligation on the secretary of state that is not otherwise required
26 by law.

27 (11) As used in this section:

28 (a) "Corrective action" means action taken by a licensee or a
29 clerk, agent, or employee of a licensee designed to prevent a minor



1 from further possessing or consuming alcoholic liquor on the
2 licensed premises. Corrective action includes, but is not limited
3 to, contacting a law enforcement agency and ejecting the minor and
4 any other person suspected of aiding and abetting the minor.

5 (b) "Diligent inquiry" means a diligent good-faith effort to
6 determine the age of an individual, which includes at least 1 of
7 the following:

8 (i) An examination of an official Michigan operator's or
9 chauffeur's license, an official Michigan personal identification
10 card, a military identification card, or any other bona fide
11 picture identification that establishes the identity and age of the
12 individual.

13 (ii) Use of a secure identity verification device if all of the
14 following conditions are met:

15 (A) The electronic scan of a biometric of the individual is
16 referenced against any form of picture identification described in
17 subparagraph (i).

18 (B) The authenticity of the picture identification was
19 previously verified by an electronic authentication process.

20 (C) The identity of the individual was previously verified
21 through a commercially available knowledge-based electronic
22 authentication process.

23 (D) The authenticated picture identification was securely
24 linked to biometrics contemporaneously collected from the
25 individual.

26 (c) "Retail licensee" means a person licensed to sell
27 alcoholic liquor at retail for consumption on or off the licensed
28 premises.

29 (d) "Secure identity verification device" means a commercial



1 device that instantly verifies the identity and age of an
2 individual by an electronic scan of a biometric of the individual.

3 Sec. 703. (1) A minor shall not purchase or attempt to
4 purchase alcoholic liquor, consume or attempt to consume alcoholic
5 liquor, possess or attempt to possess alcoholic liquor, or have any
6 bodily alcohol content, except as provided in this section. A minor
7 who violates this subsection is responsible for a state civil
8 infraction or guilty of a misdemeanor as follows and is not subject
9 to the penalties prescribed in section 909:

10 (a) For the first violation, the minor is responsible for a
11 state civil infraction and must be fined not more than \$100.00. A
12 court may order a minor under this subdivision to participate in
13 substance use disorder services as defined in section 6230 of the
14 public health code, 1978 PA 368, MCL 333.6230, and designated by
15 the administrator of the office of substance abuse services, and
16 may order the minor to perform community service and to undergo
17 substance abuse screening and assessment at his or her own expense
18 as described in subsection (5). A minor may be found responsible or
19 admit responsibility only once under this subdivision.

20 (b) If a violation of this subsection occurs after 1 prior
21 judgment, the minor is guilty of a misdemeanor. A misdemeanor under
22 this subdivision is punishable by imprisonment for not more than 30
23 days if the court finds that the minor violated an order of
24 probation, failed to successfully complete any treatment,
25 screening, or community service ordered by the court, or failed to
26 pay any fine for that conviction or juvenile adjudication, or by a
27 fine of not more than \$200.00, or both. A court may order a minor
28 under this subdivision to participate in substance use disorder
29 services as defined in section 6230 of the public health code, 1978



1 PA 368, MCL 333.6230, and designated by the administrator of the
2 office of substance abuse services, to perform community service,
3 and to undergo substance abuse screening and assessment at his or
4 her own expense as described in subsection (5).

5 (c) If a violation of this subsection occurs after 2 or more
6 prior judgments, the minor is guilty of a misdemeanor. A
7 misdemeanor under this subdivision is punishable by imprisonment
8 for not more than 60 days, if the court finds that the minor
9 violated an order of probation, failed to successfully complete any
10 treatment, screening, or community service ordered by the court, or
11 failed to pay any fine for that conviction or juvenile
12 adjudication, or by a fine of not more than \$500.00, or both, as
13 applicable. A court may order a minor under this subdivision to
14 participate in substance use disorder services as defined in
15 section 6230 of the public health code, 1978 PA 368, MCL 333.6230,
16 and designated by the administrator of the office of substance
17 abuse services, to perform community service, and to undergo
18 substance abuse screening and assessment at his or her own expense
19 as described in subsection (5).

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

25 (3) If an individual who pleads guilty to a misdemeanor
26 violation of subsection (1)(b) or offers a plea of admission in a
27 juvenile delinquency proceeding for a misdemeanor violation of
28 subsection (1)(b), the court, without entering a judgment of guilt
29 in a criminal proceeding or a determination in a juvenile



1 delinquency proceeding that the juvenile has committed the offense
2 and with the consent of the accused, may defer further proceedings
3 and place the individual on probation. The terms and conditions of
4 that probation include, but are not limited to, the sanctions set
5 forth in subsection (1)(c), payment of the costs including minimum
6 state cost as provided for in section 18m of chapter XIIIA 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. If a court finds that an individual violated a term or
12 condition of probation or that the individual is utilizing this
13 subsection in another court, the court may enter an adjudication of
14 guilt, or a determination in a juvenile delinquency proceeding that
15 the individual has committed the offense, and proceed as otherwise
16 provided by law. If an individual fulfills the terms and conditions
17 of probation, the court shall discharge the individual and dismiss
18 the proceedings. A discharge and dismissal under this section is
19 without adjudication of guilt or without a determination in a
20 juvenile delinquency proceeding that the individual has committed
21 the offense and is not a conviction or juvenile adjudication for
22 purposes of disqualifications or disabilities imposed by law on
23 conviction of a crime. An individual may obtain only 1 discharge
24 and dismissal under this subsection. 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
28 retain a nonpublic record of a plea and of the discharge and
29 dismissal under this subsection. These records shall be furnished



1 to any of the following:

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

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

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

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

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

21 (5) A court may order an individual found responsible for or
22 convicted of violating subsection (1) to undergo screening and
23 assessment by a person or agency as designated by the department-
24 designated community mental health entity as defined in section
25 100a of the mental health code, 1974 PA 258, MCL 330.1100a, to
26 determine whether the individual is likely to benefit from
27 rehabilitative services, including alcohol or drug education and
28 alcohol or drug treatment programs. A court may order an individual
29 subject to a misdemeanor conviction or juvenile adjudication of, or

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

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

12 (6) ~~(7)~~—A peace officer who has reasonable cause to believe a
13 minor has consumed alcoholic liquor or has any bodily alcohol
14 content may request that individual to submit to a preliminary
15 chemical breath analysis. If a minor does not consent to a
16 preliminary chemical breath analysis, the analysis must not be
17 administered without a court order, but a peace officer may seek to
18 obtain a court order. The results of a preliminary chemical breath
19 analysis or other acceptable blood alcohol test are admissible in a
20 state civil infraction proceeding or criminal prosecution to
21 determine if the minor has consumed or possessed alcoholic liquor
22 or had any bodily alcohol content.

23 (7) ~~(8)~~—A law enforcement agency, on determining that an
24 individual who is less than 18 years of age and not emancipated
25 under 1968 PA 293, MCL 722.1 to 722.6, allegedly consumed,
26 possessed, or purchased alcoholic liquor, attempted to consume,
27 possess, or purchase alcoholic liquor, or had any bodily alcohol
28 content in violation of subsection (1) shall notify the parent or
29 parents, custodian, or guardian of the individual as to the nature



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

14 (8) ~~(9)~~—This section does not prohibit a minor from possessing
 15 alcoholic liquor during regular working hours and in the course of
 16 his or her employment if employed by a person licensed by this act,
 17 by the commission, or by an agent of the commission, if the
 18 alcoholic liquor is not possessed for his or her personal
 19 consumption.

20 (9) ~~(10)~~—The following individuals are not considered to be in
 21 violation of subsection (1):

22 (a) 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 including, but not limited
 25 to, medical examination and treatment for any condition arising
 26 from a violation of sections 520b to 520g of the Michigan penal
 27 code, 1931 PA 328, MCL 750.520b to 750.520g, committed against a
 28 minor.

29 (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 (10) ~~(11)~~—If a minor who is less than 18 years of age and who
13 is not emancipated under 1968 PA 293, MCL 722.1 to 722.6,
14 voluntarily presents himself or herself to a health facility or
15 agency for treatment or for observation as provided under
16 subsection ~~(10)~~, **(9)**, the health facility or agency shall notify
17 the parent or parents, guardian, or custodian of the individual as
18 to the nature of the treatment or observation if the name of a
19 parent, guardian, or custodian is reasonably ascertainable by the
20 health facility or agency.

21 (11) ~~(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 (12) ~~(13)~~—The consumption of alcoholic liquor by a minor who
25 is 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
28 act if the purpose of the consumption is solely educational and is
29 a requirement of the course.



1 (13) ~~(14)~~—The consumption by a minor of sacramental wine in
2 connection with religious services at a church, synagogue, or
3 temple is not prohibited by this act.

4 (14) ~~(15)~~—Subsection (1) does not apply to a minor who
5 participates in either or both of the following:

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

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

18 (15) ~~(16)~~—The state police, the commission, or a local police
19 agency shall not recruit or attempt to recruit a minor for
20 participation in an undercover operation at the scene of a
21 violation of subsection (1), section 701(1), or section 801(1).

22 (16) ~~(17)~~—In a prosecution for the violation of subsection (1)
23 concerning a minor having any bodily alcohol content, it is an
24 affirmative defense that the minor consumed the alcoholic liquor in
25 a venue or location where that consumption is legal.

26 (17) ~~(18)~~—As used in this section:

27 (a) "Any bodily alcohol content" means either of the
28 following:

29 (i) An alcohol content of 0.02 grams or more per 100



1 milliliters of blood, per 210 liters of breath, or per 67
 2 milliliters of urine.

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

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

10 (c) "Health facility or agency" means that term as defined in
 11 section 20106 of the public health code, 1978 PA 368, MCL
 12 333.20106.

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

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

22 (ii) Section 624a, 624b, or 625 of the Michigan vehicle code,
 23 1949 PA 300, MCL 257.624a, 257.624b, and 257.625.

24 (iii) Section 80176, 81134, or 82127 of the natural resources
 25 and environmental protection act, 1994 PA 451, MCL 324.80176,
 26 324.81134, and 324.82127.

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

29 Enacting section 1. This amendatory act does not take effect



- 1 unless Senate Bill No. _____ or House Bill No. 5846 (request no.
- 2 05617'20 *) of the 100th Legislature is enacted into law.

