

# HOUSE BILL No. 5785

July 13, 2016, Introduced by Rep. Lucido 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 2012 PA 125.

**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. A court may order a minor under this subdivision to  
10 participate in substance ~~abuse prevention services or substance~~  
11 ~~abuse treatment and rehabilitation~~ **USE DISORDER** services as defined

1 in section ~~6107-6230~~ of the public health code, 1978 PA 368, MCL  
2 ~~333.6107,~~ **333.6230**, and designated by the administrator of the  
3 office of substance abuse services, and may order ~~that~~ **THE** minor to  
4 perform community service and to undergo substance abuse screening  
5 and assessment at his or her own expense as described in subsection  
6 (5).

7 (b) For a second violation of this subsection, section 33b(1)  
8 of former 1933 (Ex Sess) PA 8, or a local ordinance substantially  
9 corresponding to this subsection or section 33b(1) of former 1933  
10 (Ex Sess) PA 8, by imprisonment for not more than 30 days but only  
11 if the court finds that the minor violated an order of probation,  
12 failed to successfully complete any treatment, screening, or  
13 community service ordered by the court, or failed to pay any fine  
14 for that conviction or juvenile adjudication, by a fine of not more  
15 than \$200.00, or both. A court may order a minor under this  
16 subdivision to participate in substance ~~abuse prevention services~~  
17 ~~or substance abuse treatment and rehabilitation~~ **USE DISORDER**  
18 services as defined in section ~~6107-6230~~ of the public health code,  
19 1978 PA 368, MCL ~~333.6107,~~ **333.6230**, and designated by the  
20 administrator of the office of substance abuse services, to perform  
21 community service, and to undergo substance abuse screening and  
22 assessment at his or her own expense as described in subsection  
23 (5).

24 (c) For a third or subsequent violation of this subsection,  
25 section 33b(1) of former 1933 (Ex Sess) PA 8, or a local ordinance  
26 substantially corresponding to this subsection or section 33b(1) of  
27 former 1933 (Ex Sess) PA 8, by imprisonment for not more than 60

1 days but only if the court finds that the minor violated an order  
2 of probation, failed to successfully complete any treatment,  
3 screening, or community service ordered by the court, or failed to  
4 pay any fine for that conviction or juvenile adjudication, by a  
5 fine of not more than \$500.00, or both. A court may order a minor  
6 under this subdivision to participate in substance ~~abuse prevention~~  
7 ~~services or substance abuse treatment and rehabilitation~~ **USE**  
8 **DISORDER** services as defined in section ~~6107-6230~~ of the public  
9 health code, 1978 PA 368, MCL ~~333.6107,~~ **333.6230**, and designated by  
10 the administrator of the office of substance abuse services, to  
11 perform community service, and to undergo substance abuse screening  
12 and assessment at his or her own expense as described in subsection  
13 (5).

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

19 (3) When an individual who has not previously been convicted  
20 of or received a juvenile adjudication for a violation of  
21 subsection (1) pleads guilty to a violation of subsection (1) or  
22 offers a plea of admission in a juvenile delinquency proceeding for  
23 a violation of subsection (1), the court, without entering a  
24 judgment of guilt in a criminal proceeding or a determination in a  
25 juvenile delinquency proceeding that the juvenile has committed the  
26 offense and with the consent of the accused, may defer further  
27 proceedings and place the individual on probation. The terms and

1 conditions of that probation include, but are not limited to, the  
2 sanctions set forth in subsection (1)(a), payment of the costs  
3 including minimum state cost as provided for in section 18m of  
4 chapter XIIA of the probate code of 1939, 1939 PA 288, MCL  
5 712A.18m, and section 1j of chapter IX of the code of criminal  
6 procedure, 1927 PA 175, MCL 769.1j, and the costs of probation as  
7 prescribed in section 3 of chapter XI of the code of criminal  
8 procedure, 1927 PA 175, MCL 771.3. If a court finds that an  
9 individual violated a term or condition of probation or that the  
10 individual is utilizing this subsection in another court, the court  
11 may enter an adjudication of guilt, or a determination in a  
12 juvenile delinquency proceeding that the individual has committed  
13 the offense, and proceed as otherwise provided by law. If an  
14 individual fulfills the terms and conditions of probation, the  
15 court shall discharge the individual and dismiss the proceedings.  
16 ~~Discharge~~ **A DISCHARGE** and dismissal under this section ~~shall be~~ **IS**  
17 without adjudication of guilt or without a determination in a  
18 juvenile delinquency proceeding that the individual has committed  
19 the offense and is not a conviction or juvenile adjudication for  
20 purposes of disqualifications or disabilities imposed by law ~~upon~~  
21 **ON** conviction of a crime. An individual may obtain only 1 discharge  
22 and dismissal under this subsection. The court shall maintain a  
23 nonpublic record of the matter while proceedings are deferred and  
24 the individual is on probation and if there is a discharge and  
25 dismissal under this subsection. The secretary of state shall  
26 retain a nonpublic record of a plea and of the discharge and  
27 dismissal under this subsection. These records shall be furnished

1 to any of the following:

2 (a) To a court, prosecutor, or police agency ~~upon~~**ON** request  
3 for the purpose of determining if an individual has already  
4 utilized this subsection.

5 (b) To the department of corrections, a prosecutor, or a law  
6 enforcement agency, ~~upon~~**ON** the department's, a prosecutor's, or a  
7 law 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 violation of subsection (1) successfully deferred,  
19 discharged, and dismissed under subsection (3) is considered a  
20 prior violation for the purposes of subsection (1)(b) and (c).

21 (5) A court may order an individual convicted of violating  
22 subsection (1) to undergo screening and assessment by a person or  
23 agency as designated by the ~~substance abuse coordinating agency as~~  
24 ~~defined in section 6103 of the public health code, 1978 PA 368, MCL~~  
25 ~~333.6103, in order~~ **DEPARTMENT-DESIGNATED COMMUNITY MENTAL HEALTH**  
26 **ENTITY AS DEFINED IN SECTION 100A OF THE MENTAL HEALTH CODE, 1974**  
27 **PA 258, MCL 330.1100A,** to determine whether the individual is

1 likely to benefit from rehabilitative services, including alcohol  
2 or drug education and alcohol or drug treatment programs. A court  
3 may order an individual subject to a conviction or juvenile  
4 adjudication of, or placed on probation regarding, a violation of  
5 subsection (1) to submit to a random or regular preliminary  
6 chemical breath analysis. The parent, guardian, or custodian of a  
7 minor ~~under~~ **WHO IS LESS THAN** 18 years of age not emancipated under  
8 1968 PA 293, MCL 722.1 to 722.6, may request a random or regular  
9 preliminary chemical breath analysis as part of the probation.

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

14 (7) A peace officer who has reasonable cause to believe a  
15 minor has consumed alcoholic liquor or has any bodily alcohol  
16 content may ~~require~~ **REQUEST** that individual to submit to a  
17 preliminary chemical breath analysis. **IF A MINOR DOES NOT CONSENT**  
18 **TO A PRELIMINARY CHEMICAL BREATH TEST, THE TEST SHALL NOT BE**  
19 **ADMINISTERED WITHOUT A COURT ORDER, BUT A PEACE OFFICER MAKE SEEK**  
20 **TO OBTAIN A COURT ORDER.** A peace officer may arrest an individual  
21 based in whole or in part upon the results of a preliminary  
22 chemical breath analysis. The results of a preliminary chemical  
23 breath analysis or other acceptable blood alcohol test are  
24 admissible in a criminal prosecution to determine ~~whether~~ **IF** the  
25 minor has consumed or possessed alcoholic liquor or had any bodily  
26 alcohol content. ~~A minor who refuses to submit to a preliminary~~  
27 ~~chemical breath test analysis as required in this subsection is~~

1 ~~responsible for a state civil infraction and may be ordered to pay~~  
2 ~~a civil fine of not more than \$100.00.~~

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

23 (9) 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 (10) The following individuals are not considered to be in  
3 violation of subsection (1):

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

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

13 (i) Has consumed alcoholic liquor.

14 (ii) Voluntarily presents himself or herself to a health  
15 facility or agency for treatment or for observation including, but  
16 not limited to, medical examination and treatment for any condition  
17 arising from a violation of sections 520b to 520g of the Michigan  
18 penal code, 1931 PA 328, MCL 750.520b to 750.520g, committed  
19 against a minor.

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

23 (11) If a minor ~~under the age of~~ **WHO IS LESS THAN 18 YEARS OF**  
24 **AGE** who is not emancipated under 1968 PA 293, MCL 722.1 to 722.6,  
25 voluntarily presents himself or herself to a health facility or  
26 agency for treatment or for observation as provided under  
27 subsection (10), the health facility or agency shall notify the



1 parent or parents, guardian, or custodian of the individual as to  
2 the nature of the treatment or observation if the name of a parent,  
3 guardian, or custodian is reasonably ascertainable by the health  
4 facility or agency.

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

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

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

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

19 (a) An undercover operation in which the minor purchases or  
20 receives alcoholic liquor under the direction of the person's  
21 employer and with the prior approval of the local prosecutor's  
22 office as part of an employer-sponsored internal enforcement  
23 action.

24 (b) An undercover operation in which the minor purchases or  
25 receives alcoholic liquor under the direction of the state police,  
26 the commission, or a local police agency as part of an enforcement  
27 action unless the initial or contemporaneous purchase or receipt of

1 alcoholic liquor by the minor was not under the direction of the  
2 state police, the commission, or the local police agency and was  
3 not part of the undercover operation.

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

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

12 (18) As used in this section:

13 (a) "Any bodily alcohol content" means either of the  
14 following:

15 (i) An alcohol content of 0.02 grams or more per 100  
16 milliliters of blood, per 210 liters of breath, or per 67  
17 milliliters of urine.

18 (ii) Any presence of alcohol within a person's body resulting  
19 from the consumption of alcoholic liquor, other than consumption of  
20 alcoholic liquor as a part of a generally recognized religious  
21 service or ceremony.

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

25 (c) "Health facility or agency" means that term as defined in  
26 section 20106 of the public health code, 1978 PA 368, MCL  
27 333.20106.

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