

HOUSE BILL No. 5463

January 14, 1998, Introduced by Rep. Scranton and referred to the Committee on Judiciary.

A bill to amend 1933 (Ex Sess) PA 8, entitled "The Michigan liquor control act," by amending section 33b (MCL 436.33b), as amended by 1996 PA 492.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 33b. (1) A person less than 21 years of age shall not
2 purchase or attempt to purchase alcoholic liquor, consume or
3 attempt to consume alcoholic liquor, or possess or attempt to
4 possess alcoholic liquor, except as provided in this section and
5 section ~~33a(1)~~ 624B(1) OF THE MICHIGAN VEHICLE CODE, 1949 PA
6 300, MCL 257.624B. Notwithstanding section 50, a person less
7 than 21 years of age who violates this subsection is guilty of a
8 misdemeanor punishable by the following fines and sanctions, and
9 is not subject to the penalties prescribed in section 50:

1 (a) For the first violation a fine of not more than \$100.00,
2 and may be ordered to participate in substance abuse prevention
3 or substance abuse treatment and rehabilitation services as
4 defined in section 6107 of the public health code, ~~Act No. 368~~
5 ~~of the Public Acts of 1978, being section 333.6107 of the~~
6 ~~Michigan Compiled Laws~~ 1978 PA 368, MCL 333.6107, and designated
7 by the administrator of substance abuse services, and may be
8 ordered to perform community service and to undergo substance
9 abuse screening and assessment at his or her own expense as
10 described in subsection (3). THE PERSON IS ALSO SUBJECT TO SANC-
11 TIONS AGAINST HIS OR HER OPERATOR'S OR CHAUFFEUR'S LICENSE
12 IMPOSED IN SUBSECTION (4).

13 (b) For a second violation a fine of not more than \$200.00,
14 and may be ordered to participate in substance abuse prevention
15 or substance abuse treatment and rehabilitation services as
16 defined in section 6107 of ~~Act No. 368 of the Public Acts of~~
17 ~~1978~~ THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.6107, and des-
18 ignated by the administrator of substance abuse services, to per-
19 form community service, and to undergo substance abuse screening
20 and assessment at his or her own expense as described in subsec-
21 tion (3). The person is also subject to sanctions against his or
22 her operator's or chauffeur's license imposed in subsection (4).

23 (c) For a third or subsequent violation a fine of not more
24 than \$500.00, and may be ordered to participate in substance
25 abuse prevention or substance abuse treatment and rehabilitation
26 services as defined in section 6107 of ~~Act No. 368 of the Public~~
27 ~~Acts of 1978~~ THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.6107,

1 and designated by the administrator of substance abuse services,
2 to perform community service, and to undergo substance abuse
3 screening and assessment at his or her own expense as described
4 in subsection (3). The person is also subject to sanctions
5 against his or her operator's or chauffeur's license imposed in
6 subsection (4).

7 (2) A person who furnishes fraudulent identification to a
8 person less than 21 years of age, or notwithstanding subsection
9 (1) a person less than 21 years of age who uses fraudulent iden-
10 tification to purchase alcoholic liquor, is guilty of a
11 misdemeanor. The court shall order the secretary of state to
12 suspend, pursuant to section 319(5) of ~~Act No. 300 of the Public~~
13 ~~Acts of 1949, being section 257.319 of the Michigan Compiled~~
14 ~~Laws~~ THE MICHIGAN VEHICLE CODE, 1949 PA 300, MCL 257.319, for a
15 period of 90 days, the ~~operator~~ OPERATOR'S or ~~chauffeur~~
16 CHAUFFEUR'S license of a person who is convicted of furnishing or
17 using fraudulent identification in violation of this subsection
18 and the ~~operator~~ OPERATOR'S or ~~chauffeur~~ CHAUFFEUR'S license
19 of that person shall be surrendered to the court. The court
20 shall immediately forward the surrendered license and an abstract
21 of conviction to the secretary of state. A suspension ordered
22 under this subsection shall be in addition to any other suspen-
23 sion of the person's ~~operator~~ OPERATOR'S or ~~chauffeur~~
24 CHAUFFEUR'S license.

25 (3) The court may order the person found violating subsec-
26 tion (1) to undergo screening and assessment by a person or
27 agency as designated by the substance abuse coordinating agency

1 as defined in section 6103 of ~~Act No. 368 of the Public Acts of~~
2 ~~1978, being section 333.6103 of the Michigan Compiled Laws~~ THE
3 PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.6103, in order to deter-
4 mine whether the person is likely to benefit from rehabilitative
5 services, including alcohol or drug education and alcohol or drug
6 treatment programs.

7 (4) Immediately upon the entry of a conviction or a probate
8 court disposition for a violation of subsection (1), the court
9 ~~shall consider all prior convictions or probate court disposi-~~
10 ~~tions of subsection (1), or a local ordinance or law of another~~
11 ~~state substantially corresponding to subsection (1), and shall~~
12 impose the following sanctions:

13 (a) If the court finds that the person ~~has 1 such prior~~
14 ~~conviction or probate court disposition~~ IS LESS THAN 18 YEARS OF
15 AGE, the court shall order the secretary of state to suspend the
16 operator's or chauffeur's license of the person ~~for a period of~~
17 UNTIL THE PERSON REACHES 18 YEARS OF AGE BUT FOR not less than 90
18 days ~~or more than 180 days. The court may order the secretary~~
19 ~~of state to issue to the person a restricted license after the~~
20 ~~first 30 days of the period of suspension in the manner described~~
21 ~~in subsection (5) and provided for in section 319 of Act No. 300~~
22 ~~of the Public Acts of 1949, being section 257.319 of the Michigan~~
23 ~~Compiled Laws.~~ AND SHALL NOT ORDER THE SECRETARY OF STATE TO
24 ISSUE A RESTRICTED LICENSE. In the case of a person who does not
25 possess an operator's or chauffeur's license, the secretary of
26 state shall deny the application for an operator's or chauffeur's
27 license for the applicable suspension period.

1 (b) If the court finds that the person ~~has 2 or more such~~
2 ~~prior convictions or probate court dispositions~~ IS MORE THAN 18
3 YEARS OF AGE BUT LESS THAN 21 YEARS OF AGE, the court shall order
4 the secretary of state to suspend the operator's or chauffeur's
5 license of the person ~~for a period of~~ UNTIL THE PERSON REACHES
6 21 YEARS OF AGE BUT FOR not less than ~~180~~ 90 days ~~or more than~~
7 ~~1 year. The court may order the secretary of state to issue to~~
8 ~~the person a restricted license after the first 60 days of the~~
9 ~~period of suspension in the manner described in subsection (5)~~
10 ~~and provided for in section 319 of Act No. 300 of the Public Acts~~
11 ~~of 1949, being section 257.319 of the Michigan Compiled Laws.~~
12 AND SHALL NOT ORDER THE SECRETARY OF STATE TO ISSUE A RESTRICTED
13 LICENSE. In the case of a person who does not possess an
14 operator's or chauffeur's license, the secretary of state shall
15 deny the application for an operator's or chauffeur's license for
16 the applicable suspension period.

17 ~~-(5) In those cases in which a restricted license is allowed~~
18 ~~under this section, the court shall not order the secretary of~~
19 ~~state to issue a restricted license unless the person states~~
20 ~~under oath, and the court finds based upon the record in open~~
21 ~~court, that the person is unable to take public transportation to~~
22 ~~and from his or her work location, place of alcohol or drug edu-~~
23 ~~cation treatment, probation department, court-ordered community~~
24 ~~service program, or educational institution, and does not have~~
25 ~~any family members or others able to provide transportation. The~~
26 ~~court order under subsection (4) and the restricted license shall~~
27 ~~indicate the work location of the person to whom it is issued,~~

~~1 the approved route or routes and permitted times of travel, and
2 shall permit the person to whom it is issued only to do 1 or more
3 of the following:~~

~~4 (a) Drive to and from the person's residence and work
5 location.~~

~~6 (b) Drive in the course of the person's employment or
7 occupation.~~

~~8 (c) Drive to and from the person's residence and an alcohol
9 or drug education or treatment program as ordered by the court.~~

~~10 (d) Drive to and from the person's residence and the court
11 probation department, or a court-ordered community service pro-
12 gram, or both.~~

~~13 (e) Drive to and from the person's residence and an educa-
14 tional institution at which the person is enrolled as a student.~~

~~15 (5) --(6) If license sanctions are imposed, immediately~~
16 IMMEDIATELY upon the entry of a court-ordered sanction pursuant
17 to subsection (4), the court shall order the person convicted for
18 the violation to surrender to the court his or her operator's or
19 chauffeur's license. The court shall immediately forward a
20 notice of court-ordered license sanctions to the secretary of
21 state. If the license is not forwarded to the secretary of
22 state, an explanation of the reason why the license is absent
23 shall be attached. If the finding is appealed to the circuit
24 court, the court may, ex parte, order the secretary of state to
25 stay the suspension issued pursuant to this section pending the
26 outcome of the appeal. Immediately following imposition of the

1 sanction, the court shall forward a notice to the secretary of
2 state indicating the sanction imposed.

3 (6) ~~-(7)-~~ A peace officer who has reasonable cause to
4 believe a person less than 21 years of age has consumed alcoholic
5 liquor may require the person to submit to a preliminary chemical
6 breath analysis. A peace officer may arrest a person based in
7 whole or in part upon the results of a preliminary chemical
8 breath analysis. The results of a preliminary chemical breath
9 analysis or other acceptable blood alcohol test are admissible in
10 a criminal prosecution to determine whether the person less than
11 21 years of age has consumed or possessed alcoholic liquor. A
12 person less than 21 years of age who refuses to submit to a pre-
13 liminary chemical breath test analysis as required in this sub-
14 section is responsible for a state civil infraction and may be
15 ordered to pay a civil fine of not more than \$100.00.

16 (7) ~~-(8)-~~ A law enforcement agency, upon determining that a
17 person less than 18 years of age who is not emancipated pursuant
18 to ~~Act No. 293 of the Public Acts of 1968, being sections 722.1~~
19 ~~to 722.6 of the Michigan Compiled Laws~~ 1968 PA 293, MCL 722.1 TO
20 722.6, allegedly consumed, possessed, purchased, or attempted to
21 consume, possess, or purchase alcoholic liquor in violation of
22 subsection (1) shall notify the parent or parents, custodian, or
23 guardian of the person as to the nature of the violation if the
24 name of a parent, guardian, or custodian is reasonably ascertain-
25 able by the law enforcement agency. The notice required by this
26 subsection shall be made not later than 48 hours after the law
27 enforcement agency determines that the person who allegedly

1 violated subsection (1) is less than 18 years of age and not
2 emancipated pursuant to ~~Act No. 293 of the Public Acts of 1968~~
3 1968 PA 293, MCL 722.1 TO 722.6. The notice may be made by any
4 means reasonably calculated to give prompt actual notice includ-
5 ing, but not limited to, notice in person, by telephone, or by
6 first-class mail. If a person less than 17 years of age is
7 incarcerated for violating subsection (1), his or her parents or
8 legal guardian shall be notified immediately as provided in this
9 subsection.

10 (8) ~~-(9)-~~ This section does not prohibit a person less than
11 21 years of age from possessing alcoholic liquor during regular
12 working hours and in the course of his or her employment if
13 employed by a person licensed by this act, by the commission, or
14 by an agent of the commission, if the alcoholic liquor is not
15 possessed for his or her personal consumption.

16 (9) ~~-(10)-~~ This section shall not be construed to limit the
17 civil or criminal liability of the vendor or the vendor's clerk,
18 servant, agent, or employee for a violation of this act.

19 (10) ~~-(11)-~~ The consumption of alcoholic liquor by a person
20 less than 21 years of age who is enrolled in a course offered by
21 an accredited post secondary educational institution in an aca-
22 demic building of the institution under the supervision of a fac-
23 ulty member is not prohibited by this act if the purpose of the
24 consumption is solely educational and is a necessary ingredient
25 of the course.

1 (11) ~~-(12)-~~ The consumption by a person less than 21 years
 2 of age of sacramental wine in connection with religious services
 3 at a church, synagogue, or temple is not prohibited by this act.

4 (12) ~~-(13)-~~ Subsection (1) does not apply to a person less
 5 than 21 years of age who participates in either or both of the
 6 following:

7 (a) An undercover operation in which the person less than 21
 8 years of age purchases or receives alcoholic liquor under the
 9 direction of the person's employer and with the prior approval of
 10 the local prosecutor's office as part of an employer-sponsored
 11 internal enforcement action.

12 (b) An undercover operation in which the person less than 21
 13 years of age purchases or receives alcoholic liquor under the
 14 direction of the state police, the commission, or a local police
 15 agency as part of an enforcement action ~~except~~ PROVIDED that
 16 any initial or contemporaneous purchase or receipt of alcoholic
 17 liquor by the person less than 21 years of age is under the
 18 direction of the state police, the commission, or the local
 19 police agency and is part of the undercover operation. The state
 20 police, the commission, or a local police agency shall not
 21 recruit or attempt to recruit a person less than 21 years of age
 22 for participation in an undercover operation at the scene of a
 23 violation of subsection (1), section 22(3), or section 33(1).

24 (13) ~~-(14)-~~ As used in this section, ~~-(a)-~~ "Probate"
 25 "PROBATE court disposition" means an order of disposition of the
 26 probate court or the family division of the circuit court for a
 27 child found to be within the provisions of chapter XIIA of ~~Act~~

1 ~~No. 288 of the Public Acts of 1939, being sections 712A.1 to~~
2 ~~712A.32 of the Michigan Compiled Laws 1939 PA 288, MCL 712A.1 TO~~
3 ~~712A.32.~~

4 ~~(b) "Work location" means, as applicable, either the spe-~~
5 ~~cific place or places of employment, or the territory or territo-~~
6 ~~ries regularly visited by the person in pursuance of the person's~~
7 ~~occupation, or both.~~

8 Enacting section 1. This amendatory act does not take
9 effect unless Senate Bill No. _____ or House Bill No. _____
10 (request no. 04208'97 a) of the 89th Legislature is enacted into
11 law.