

Chapter 403 – Minor in Possession of Alcohol

Section 403.1 – Intent

An Ordinance to define and prohibit the possession, purchase, consumption, or transportation of alcoholic liquor by minors and to provide penalties for the violation thereof.

Section 403.2 – Definitions

Alcohol liquor - Any spirituous, vinous, malt, or fermented liquor, liquids, and compounds, whether medicated, propriety, patented, and by whatever means called, containing $\frac{1}{2}$ of 1% or more of alcohol by volume which is fit for use for beverage purposes.

Section 403.3 – Prohibitions and Penalties for Purchase, Consumption, or Possession of Alcoholic Liquor

- A. A minor shall not purchase or attempt to purchase alcoholic liquor, consume, or attempt to consume alcoholic liquor, possess, or attempt to possess alcoholic liquor, or have any bodily alcohol content, except as provided in this section. A minor who violates this subsection is responsible for a municipal civil infraction or guilty of a misdemeanor punishable by the following fines and sanctions:
1. For the first violation of this subsection (A), MCL 436.1703(1), or other local ordinance substantially corresponding to that statute, the minor is responsible for a civil infraction, shall be fined not more than \$100.00, and be subject to the court orders described in subsection (D). A minor may be found responsible or admit responsibility only once under this subsection (A)(I), MCL 436.1703(1)(a), or other local ordinance substantially corresponding to that statute.
 2. If a violation of this subsection (A), MCL 436.1703(1), or other local ordinance substantially corresponding to that statute, occurs after one (1) prior judgment for an alcohol or controlled substance violation identified in subsection (A)(4), the minor is guilty of a misdemeanor, which is punishable by imprisonment for not more than thirty (30) days if the Court finds that the minor violated an order of probation, failed to successfully complete any treatment, screening, or community service ordered by the Court, or failed to pay any fine for that conviction or juvenile adjudication, by a fine of not more than two hundred dollars (\$200.00), or both, and the court orders described in subsection (D). A minor who pleads guilty or admits in a juvenile delinquency proceeding to a violation of this subsection (A)(2), may request deferral of proceedings

and placement on probation under subsection (C).

3. If a violation of this subsection (A), MCL 436.1703(1), or other local ordinance substantially corresponding to that statute, occurs after two (2) or more prior judgments for an alcohol or controlled substance violation identified in subsection (A)(4), the minor is guilty of a misdemeanor which is punishable by imprisonment for not more than sixty (60) days if the Court finds that the minor violated an order of probation, failed to successfully complete any treatment, screening, or community service ordered by the court, or failed to pay any fine for that conviction or juvenile adjudication, by a fine of not more than five hundred dollars (\$500.00), or both, as applicable, and the Court orders described in subsection (D).
 4. For purposes of subsections (A)(2) and (A)(3), "prior judgment" means a conviction, juvenile adjudication, or finding or admission of responsibility for a violation of the statutes listed in this subsection, or any federal or state law or local ordinance that substantially corresponds to any of those listed statutes:
 - a. MCL 436.1703(1), or former MCL 436.33b.
 - b. A misdemeanor violation that is dismissed under subsection (C), MCL 436.1703(3), or other local ordinance substantially corresponding to that statute.
 - c. MCL 436.1701 (Sale/furnish alcohol to minors.)
 - d. MCL 436.1707 (Sale/service/furnish alcohol to intoxicated persons.)
 - e. MCL 257.624a (Transport/possess open alcohol in a motor vehicle.)
 - f. MCL 257.624b (Transport/possess open alcohol in a motor vehicle by a minor.)
 - g. MCL 257.625 (Operating a motor vehicle while intoxicated/impaired.)
 - h. MCL 324.80176 (Operating a boat while under influence.)
 - i. MCL 324.81134 (Operating off-road vehicle while under influence.)
 - j. MCL 324.82127 (Operating snowmobile while under influence.)
 - k. MCL 750.167a (Carry/possess/use/discharge firearm while under influence.)
- B. An individual who furnishes fraudulent identification to a minor, or a minor who uses fraudulent identification to purchase alcoholic liquor, is guilty of a misdemeanor punishable by imprisonment for not more than ninety-three (93) days or a fine of not more than one hundred dollars (\$100.00), or both.
- C. When a minor pleads guilty or admits in a juvenile delinquency proceeding to a violation of subsection (A)(2), the Court, without entering a judgment of guilt in a criminal proceeding or a determination in a juvenile delinquency proceeding that the juvenile has committed the offense and with the consent of the accused, may defer further proceedings and place the individual on probation under MCL 436.1703(3), which provides for dismissal of the

proceedings upon the terms and conditions of probation being fulfilled. 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. Discharge and dismissal under this section shall be 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 upon conviction of a crime. An individual may obtain only one (1) discharge and dismissal under this subsection. The court shall maintain a nonpublic record of the matter while proceedings are deferred, 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 as required by State Law. This record shall be furnished to any of the following:

1. To a court, prosecutor, or police agency upon request for the purpose of determining if an individual has already utilized this subsection; and
 2. To the state department of corrections, a prosecutor's, or a law enforcement agency's request, subject to all of the following conditions:
 - a. At the time of the request, the individual is an employee of the state department of corrections, the prosecutor, or the law enforcement agency, or an applicant for employment with the department of corrections, the prosecutor, or the law enforcement agency; and
 - b. The record is used by the state department of corrections, the prosecutor, or the law enforcement agency only to determine whether an employee has violated his/her conditions of employment or whether an applicant meets the criteria for employment.
- D. A Court may order an individual responsible for or convicted of violating subsection (A) to:
1. Undergo screening and assessment by a designated person or agency as provided in MCL 436.1703(5), to determine whether the individual is likely to benefit from rehabilitative services, including alcohol or drug education and alcohol or drug treatment programs.
 2. Participate in substance use disorder services as defined in MCL 333.6230 and designated by the administrator of the office of substance abuse services.

3. Perform community service, all of which shall be at the minor's own expense.

A court may order an individual subject to a conviction or juvenile adjudication of or placed on probation regarding, a violation of subsection (A)(2) or (A)(3) to submit to a random or regular preliminary chemical breath analysis as provided in MCL 436.1703(5). The parent, guardian, or custodian of a minor under eighteen (18) years of age not emancipated under 1968 PA 293, MCL 722.1 to 722.6, may request a random or regular preliminary chemical breath analysis as part of the probation.

- E. The Secretary of State shall suspend the operator's or chauffeur's license of an individual convicted of violating subsection (A)(2), (A)(3), or (B), as provided in Section 319 of the Michigan Vehicle Code, 1949 PA 300, MCL 257.319.
- F. A peace officer who has reasonable cause to believe a minor has consumed alcoholic liquor or has any bodily alcohol content may request that individual to submit to a preliminary chemical breath analysis. If a person under twenty-one (21) years of age does not consent to a preliminary chemical breath analysis, the analysis shall not be administered without a court order, but a peace officer may seek to obtain a court order. A peace officer may initiate municipal civil infractions or misdemeanor charges for a violation of subsection (a) based on whole or in part upon the results of a preliminary chemical breath analysis. The results of a preliminary chemical breath analysis or other acceptable blood alcohol test are admissible in a municipal civil infraction or criminal prosecution to determine whether the minor has consumed or possessed alcoholic liquor or had any bodily alcohol content.
- G. A law enforcement agency, upon determining that an individual less than eighteen (18) years of age who is not emancipated under 1968 PA 293 (MCL 722.1 – 722.6), allegedly consumed, possessed, purchased alcoholic liquor, attempted to consume, possess, or purchase alcoholic liquor or had any bodily alcohol content in violation of subsection (A) shall notify the parent or parents, custodian, or guardian of the individual as to the nature of the violation if the name of a parent, guardian, or custodian is reasonably ascertainable by the law enforcement agency. The law enforcement agency shall notify the parent, guardian, or custodian not later than forty-eight (48) hours after the law enforcement agency determines that the individual who allegedly violated subsection (A) is less than eighteen (18) years of age and not emancipated under 1968 PA 293 (MCL 722.1 – 722.6). The law enforcement agency may notify the parent, guardian, or custodian by any means reasonably calculated to give prompt actual notice including, but not limited to, notice in person, by telephone, or by first-class mail. If an individual less than seventeen (17) years of age is incarcerated for violating subsection (A) of this Section, his or her parents or legal guardian shall be notified immediately as provided in this subsection.
- H. This Section does not prohibit a minor from possessing alcoholic liquor during regular working hours and in the course of his or her employment if employed by a person licensed

under the Michigan Liquor Control Code of 1998, Public Act 58 of 1998, as amended, by the state liquor control commission, or by an agent of that commission, if the alcoholic liquor is not possessed for his or her personal consumption.

- I. The following individuals are not considered to be in violation of subsection (A):
 - 1. A minor who has consumed alcoholic liquor and who voluntarily presents himself or herself to a health facility or agency for treatment or for observation including, but not limited to, medical examination and treatment for any condition arising from a violation of sections 520b to 520g of the Michigan penal code, 1931 PA 328, MCL 750.520b to 750.5209, committed against a minor.
 - 2. A minor who accompanies an individual who meets both of the following criteria:
 - a. Has consumed alcoholic liquor.
 - b. Voluntarily presents himself or herself to a health facility or agency for treatment or for observation including, but not limited to, medical examination and treatment for any condition arising from a violation of Section 520b to 520g of the Michigan Penal Code, committed against a minor.
 - 3. A minor who initiates contact with law enforcement officer or emergency medical services personnel for the purpose of obtaining medical assistance for a legitimate health care concern.
- J. If a minor under the age of eighteen (18) who is not emancipated under 1968 PA 293 (MCL 722.1 – 722.6), voluntarily presents himself or herself to a health facility or agency for treatment or for observation as provided under subsection (J) of this Section, the health facility or agency shall notify the parent or parents, guardian, or custodian of the individual as to the nature of the treatment or observation if the name of a parent, guardian, or custodian is reasonably ascertainable by the health facility or agency.
- K. This section does not limit the civil or criminal liability of a vendor or the vendor's clerk, servant, agent, or employee for a violation of this act.
- L. The consumption of alcoholic liquor by a minor who is enrolled in a course offered by an accredited post-secondary educational institution in an academic building of the institution under the supervision of a faculty member is not prohibited by this act if the purpose of the consumption is solely educational and is a requirement of the course.
- M. The consumption by a minor of sacramental wine in connection with religious services at a church, synagogue, or temple is not prohibited by this act.

- N. Subsection (A) does not apply to a minor who participates in either or both of the following:
1. An undercover operation in which the minor purchases or receives alcoholic liquor under the direction of the person's employer and with the prior approval of the local prosecutor's office as part of an employer-sponsored internal enforcement action.
 2. An undercover operation in which the minor purchases or receives alcoholic liquor under the direction of the state police, the commission, or a local police agency as part of an enforcement action unless the initial or contemporaneous purchase or receipt of alcoholic liquor by the minor was not under the direction of the state police, the commission, or the local police agency and was not part of the undercover operation.
- O. The State Police, the state liquor control commission or a local police agency shall not recruit or attempt to recruit a minor for participation in an undercover operation at the scene of a violation of subsection (A) of this Section, or section 801(2), or section 701(1) of the Michigan Liquor Control Code of 1998.
- P. In a municipal civil infraction or criminal prosecution for the violation of subsection (A) concerning a minor having any bodily alcohol content, it is an affirmative defense that the minor consumed the alcoholic liquor in a venue or location where that consumption is legal.
- Q. As used in this Section:
1. **Any Bodily Alcohol Content** – Defined as either of the following:
 - a. An alcohol content of 0.02 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.
 - b. Any presence of alcohol within a person's body resulting from the consumption of alcoholic liquor, other than consumption of alcoholic liquor as a part of a generally recognized religious service or ceremony.
 2. **Emergency Medical Services Personnel** – Term as defined in section 20904 of the public health code, 1978 PA 368, MCL 333.20904.
 3. **Health Facility or Agency** – Term as defined in section 20106 of the public health code, 1978 PA 368, MCL 333.20106.
- R. A law enforcement officer who witnesses a violation of this Ordinance, may stop, and detain a person and obtain satisfactory identification, seize illegally possessed alcoholic

liquor, and issue an appearance ticket as prescribed in section 9c of chapter IV of the Code of Criminal Procedure, 1927 PA 175, MCL 764.9c.

