

Charter Township of Orion

Ordinance No. 129

Minor In Possession

Adopted July 2, 2001

AMENDED

April 18, 2011

December 15, 2014

AN ORDINANCE TO PROHIBIT THE PURCHASE, POSSESSION, OR CONSUMPTION OF ALCOHOL BY MINORS AND TO PROHIBIT THE POSSESSION OR TRANSPORTATION OF ALCOHOLIC LIQUOR IN A MOTOR VEHICLE BY A MINOR AND TO PROVIDE PENALTIES AND SANCTIONS FOR VIOLATIONS THEREOF.

ARTICLE I – TITLE

This Ordinance shall be known and cited as the Orion Township "Minor in Possession / Consumption / Transporting Alcohol Ordinance," and it shall be deemed sufficient, in any actions for the enforcement hereof, to define the same by such short title, or by reference to the number hereof.

ARTICLE II – PURPOSE AND INTENT

This Ordinance is adopted for the purpose and with the intent of prohibiting the possession of alcoholic liquor in a motor vehicle by minors; prohibiting unlawful purchase, consumption, or possession of alcoholic liquors by minors; use of fraudulent identification by minors to purchase alcoholic liquor; and to provide penalties and license sanctions for the violations of this Ordinance.

ARTICLE III – MINORS: POSSESSION; CONSUMPTION; TRANSPORTING ALCOHOL

Section 1 – Possessing or Transporting Alcoholic Liquor in a Motor Vehicle by a Minor

A person less than twenty-one (21) years of age shall not knowingly transport or possess in a motor vehicle alcoholic liquor unless the person is employed by a licensee under the Liquor Control Act, a common carrier designated by the Liquor Control Commission, and is transporting or having the alcoholic liquor in a motor vehicle under the person's employment. A person who violates this section is guilty of a misdemeanor.

Section 2 – Persons Under 21. Unlawful Purchase, Consumption or Possession; Use of Fraudulent Identification; Suspension of Operator's or Chauffeur's License; Penalties

- A. A person less than twenty-one (21) years of age shall not purchase or attempt to purchase alcoholic liquor, consume or attempt to consume alcoholic liquor or possess or attempt to possess alcoholic liquor. A person less than twenty-one (21) years of age who violates this subsection is guilty of a misdemeanor punishable by the following fines and sanctions:
1. For the first violation, a fine of not more than One Hundred Dollars (\$100) and may be ordered to participate in substance abuse prevention or substance abuse treatment and rehabilitation services and may be ordered to perform community service and to undergo substance abuse screening and assessment at his or her own expense.
 2. For a second violation, a fine of not more than Two Hundred Dollars (\$200) and may be ordered to participate in substance abuse prevention or substance abuse treatment and rehabilitation services, to perform community service and to undergo substance abuse screening and assessment at his or her own expense. The person is also subject to sanctions against his or her operator's or chauffeur's license imposed in Subsection C herein.
 3. For a third or subsequent violation, a fine of not more than Five Hundred Dollars (\$500) and may be ordered to participate in substance abuse prevention or substance abuse treatment and rehabilitation services, perform community service and to undergo substance abuse screening and assessment at his or her own expense. The person is also subject to sanctions against his or her operator's or chauffeur's license imposed in Subsection C herein.
- B. A person who furnished fraudulent identification to a person less than twenty-one (21) years of age, or a person less than twenty-one (21) years of age who uses fraudulent identification to purchase alcoholic liquor, is guilty of a misdemeanor and subject to the penalties provided for herein and in Section 4 of this Ordinance. The Court shall order the Secretary of State to suspend, for a period of ninety (90) days, the operator's or chauffeur's license of a person who is convicted of furnishing or using fraudulent identification in violation of this subsection, and the operator's or chauffeur's license of that person shall be surrendered to the Court. The Court shall immediately forward the surrendered license and the abstract of conviction to the Secretary of State. A suspension ordered under this subsection shall be in addition to any other suspension of the person's operator's or chauffeur's license.

- C. Immediately upon the entry of a conviction for a violation of Subsection A, the Court shall consider all prior convictions of Subsection A and shall impose the following sanctions:
1. If the Court finds that the person has one such prior conviction, the Court shall order the Secretary of State to suspend the operator's or chauffeur's license of the person for a period of not less than ninety (90) days or more than one hundred eighty (180) days. The Court may order the Secretary of State to issue to the person a restricted license after the first thirty (30) days of the period of suspension in the manner described in Subsection D herein. In the case of a person who does not possess an operator's or chauffeur's license, the Secretary of State shall deny the application for an operator's or chauffeur's license for the applicable suspension period.
 2. If the Court finds that the person has two or more such prior convictions, the Court shall order the Secretary of State to suspend the operator's or chauffeur's license of the person for a period of not less than one hundred eighty (180) days or more than one (1) year. The Court may order the Secretary of State to issue to the person a restricted license after the first sixty (60) days of the period of suspension in the manner described in Subsection D herein. In the case of a person who does not possess an operator's or chauffeur's license, the Secretary of State shall deny the application for an operator's or chauffeur's license for the applicable suspension period.
- D. In those cases in which a restricted license is allowed under this section, the Court shall not order the Secretary of State to issue a restricted license unless the person states under oath and the Court finds, based upon the record in open Court, that the person is unable to take public transportation to and from his or her work location, place of alcohol or drug education treatment, probation department, Court-ordered community service program, or educational institution, and does not have family members or others able to provide transportation. The Court Order under Subsection C and the restricted license shall indicate the work location of the person to whom it is issued, the approved routes and permitted times of travel, and shall permit the person to whom it is issued only to do one or more of the following:
1. Drive to and from the person's residence and work location.
 2. Drive in the course of the person's employment or occupation.
 3. Drive to and from the person's residence and an alcohol or drug education or treatment program as ordered by the Court.
 4. Drive to and from the person's residence and the Court Probation Department, or a Court-ordered community service program, or both.
 5. Drive to and from the person's residence and the educational institution at which the person is enrolled as a student.
- E. If license sanctions are imposed, immediately upon the entry of a Court-ordered sanction pursuant to Subsection C, the Court shall order the person convicted for violation to surrender to the Court his or her operator's or chauffeur's license. The Court shall immediately forward a notice of Court-ordered license sanctions to the Secretary of State.
- F. A peace officer who has reasonable cause to believe a person less than twenty-one (21) years of age has consumed alcoholic liquor may request the person to submit to a preliminary chemical breath analysis/test. A peace officer may arrest a person based in whole or in part upon the results of a preliminary chemical breath analysis/test. The results of a preliminary chemical breath analysis/test or other acceptable blood alcohol test are admissible in a criminal prosecution to determine whether the person less than twenty-one (21) years of age has consumed or possessed alcoholic liquor.
(amended 04.18.11)
- G. A law enforcement agency, upon determining that a person less than eighteen (18) years of age who is not emancipated pursuant to State law, allegedly consumed, possessed, purchased or attempted to consume, possess, or purchase alcoholic liquor in violation of Subsection A herein, shall notify the parent or parents, custodian, or guardian of the person 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 notice required by this subsection shall be made not later than forty eight (48) hours after the law enforcement agency determines that the person who allegedly violated Subsection A is less than eighteen (18) years of age and not emancipated pursuant to State law. The notice may be made 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 a person less than seventeen (17) years of age is incarcerated for violating Subsection A herein, his or her parents or legal guardians shall be notified immediately as provided in this subsection.

- H. This section does not prohibit a person less than twenty-one (21) years of age from possession of alcoholic liquor during regular working hours and in the course of his or her employment if employed by a person licensed by the Liquor Control Act, if the alcoholic liquor is not possessed for his or her personal consumption.
- I. The consumption of alcoholic liquor by a person less than twenty-one (21) years of age 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 section, if the purpose of the consumption was solely educational and is a necessary ingredient of the course.
- J. The consumption, by a person less than twenty-one (21) years of age, of sacramental wine in connection with religious services at a church, synagogue, or temple is not prohibited by this section.
- K. Subsection A does not apply to a person less than twenty-one (21) years of age who participates in any of the following:
1. An undercover operation in which the person less than twenty-one (21) years of age purchases or receives alcoholic liquor under the direction of the person's employer and with prior approval of a local prosecutor's office or city attorney's office as part of an employer-sponsored internal enforcement action.
 2. An undercover operation in which the person less than twenty-one (21) years of age purchases or receives alcoholic liquor under the direction of the police, Liquor Control Commission, or local enforcement agency as part of an enforcement action, except that any initial or contemporaneous purchase or receipt of alcoholic liquor by the person less than twenty-one (21) years of age is under the direction of the police, the Liquor Control Commission, or the local law enforcement agency and is part of the undercover operation. The police, Liquor Control Commission, or local law enforcement agency shall not recruit or attempt to recruit a person less than twenty-one (21) years of age for participation in an undercover operation at the scene of a violation of Subsection A.

Section 3 – Detention, Seizure of Alcohol

A peace officer who witnesses a violation of Sections 1 or 2 of this Ordinance may stop and detain the person for purposes of obtaining identification, seizing illegally possessed alcoholic liquor, and issuing an appearance ticket.

Section 4 – Penalties

Unless other penalties are specifically provided for in this Ordinance, which other penalties shall specifically apply to violations of this Ordinance to which they pertain, any person who shall be convicted of violating any of the provisions of this Ordinance shall be deemed guilty of a misdemeanor and shall be punished in accordance with this Ordinance, with a fine not to exceed Five Hundred Dollars (\$500) and/or imprisonment in the Oakland County Jail not to exceed ninety (90) days, or both said fine and/or imprisonment in the Court's discretion, plus costs of prosecution. *(amended 04.18.11)*

Section 5 – Deferral Provision *(added 12.15.14)*

When an individual who has not previously been convicted of or received a juvenile adjudication for a violation of subsection (1) pleads guilty to a violation of subsection (1) or offers a plea of admission in a juvenile delinquency proceeding for a violation of subsection (1), 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. 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 and the individual is on probation and if there is a discharge and dismissal under this subsection.

ARTICLE IV – REPEALER; SEVERABILITY; SAVINGS CLAUSE; EFFECTIVE DATE

Section 1 – Repealer

All Ordinances or parts of Ordinances in conflict herewith are hereby repealed only to the extent necessary to give this Ordinance full force and effect.

Section 2 – Severability

The various parts, sections and clauses of this Ordinance are declared to be severable. If any part, sentence, paragraph, section or clause is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of the Ordinance shall not be affected. *(amended 04.18.11)*

Section 3 – Savings

All proceedings pending and all rights and liabilities existing, acquired, or incurred at the time this Ordinance takes effect, are saved and may be consummated according to the law when they were commenced.

Section 4 – Effective Date

This Ordinance shall be published in a newspaper of general circulation in the Charter Township of Orion, and shall become effective as provided by law. *(amended 04.18.11)*

Section 5 – Adoption

This Ordinance is hereby declared to have been adopted by the Board of Trustees of the Charter Township of Orion at a meeting thereof duly called and held on the 18th day of April, 2011, and ordered to be given publication in the manner prescribed by the Charter of the Township of Orion. *(amended 04.18.11)*

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