

**House Bill 4819 as introduced**  
**First Analysis (6-25-03)**

**Sponsor: Rep. Stephen F. Adamini**  
**Committee: Regulatory Reform**

***THE APPARENT PROBLEM:***

Under Michigan's zero tolerance laws, it is illegal for a person under 21 years of age to purchase, consume, possess (or to attempt to purchase, consume, or possess) alcoholic beverages. A violation is a misdemeanor with penalties that include automatic driver's license sanctions (for second and subsequent violations) and the possibility of a fine, community service, and substance abuse screening (at the violator's own expense) and/or substance abuse prevention or treatment services.

Until recently, a minor could be prosecuted under the minor in possession (MIP) laws based on the results of a Breathalyzer or chemical test even if the law enforcement officer did not observe the youth actually consuming the alcohol or if no beverages containing alcohol were found on his or her person. In *People v Rutledge*, 250 Mich App 1 (2002), the court held that a minor who legally consumed alcohol in a jurisdiction outside of Michigan, but who returned to the state (in this case, as a passenger in a car), could not be prosecuted under the MIP statute. The decision hinged on the court's interpretation of "consume" and "possess", which were determined to mean acts taking place in the present. Hence, a person could not be prosecuted for still having in his or her body something that was consumed in the past or that a person no longer had control over, e.g., during digestion. In its decision, the court noted that Section 625(6)(b) of the Michigan Vehicle Code, which makes it illegal for a minor to operate a vehicle with a BAC of more than 0.02, did criminalize the "mere presence of alcohol in a minor's body as a result of the consumption of alcohol" but that the MIP statute did not "criminalize the consumption itself".

Earlier this year, the Marquette County Circuit Court took the *Rutledge* ruling a step further when it upheld a trial court's suppression of evidence of alcohol consumption or possession and the subsequent discovery of a small amount of marijuana. The case involved a minor defendant, also a passenger in a car, who was charged under the MIP statute after registering a 0.151 BAC on a Breathalyzer test. This

case differed from *Rutledge* in that the alcohol had been consumed within the state. The appellate court reviewed *de novo* whether the trial court correctly applied the findings in *Rutledge* and held that no error had been made by the trial court [*People v LaJoyce*, No. 02-40196-AR (2003)]. The result was that once again an MIP charge was thrown out based on the interpretation of the words "consume" and "possess".

According to testimony presented before the members of the House Regulatory Reform Committee, the word is beginning to spread around the state that minors can successfully fight an MIP charge if the officer did not actually see them holding or drinking an alcoholic beverage. Reportedly, in one northern jurisdiction, intoxicated youths have even taunted law enforcement officers to that effect. As this appears to defeat the spirit and intent of the MIP laws, legislation has been offered to close this so-called loophole in the law by specifically criminalizing the consumption itself of alcohol as evidenced by the results of a Breathalyzer or other test.

***THE CONTENT OF THE BILL:***

House Bill 4819 would amend the Michigan Liquor Control Code to apply the same penalties for consuming, possessing, or purchasing alcohol by a person under 21 years of age to a minor who had any bodily alcohol content (BAC). The bill would define "any bodily alcohol content" as meaning that term as defined by the Michigan Vehicle Code (MCL 257.625).

(Currently, Section 625 of the vehicle code defines "any bodily alcohol content" to mean an alcohol content of not less than 0.02 grams or more than 0.07 grams per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine, or any presence of alcohol within a person's body resulting from the consumption of liquor, other than consumption of liquor as a part of a generally recognized religious

service or ceremony. However, House Bill 4247, which would amend the vehicle code to establish a BAC of 0.08 grams as the *per se* level for driving while intoxicated, would revise the alcohol content level to not less than 0.02 grams but less than 0.08 grams.)

MCL 436.1703

**FISCAL IMPLICATIONS:**

Fiscal information is not available.

**ARGUMENTS:**

**For:**

When the zero tolerance laws were enacted, the intent clearly was to criminalize the use of alcohol by minors. However, two recent court cases have greatly reduced the ability of law enforcement officers to enforce the statute. In particular, the courts have ruled that the terms “consume” and “possess” refer to actions done in the present. Under this interpretation, a minor cannot be prosecuted for “consuming” alcohol unless he or she is observed drinking an alcoholic beverage. Having alcohol in the system that was ingested earlier fails the test of “consuming”. Likewise, where a minor previously could have been convicted of “possessing” alcohol by having alcohol within his or her body, “possessing” now has been interpreted by the *Rutledge* court to apply only to a substance that the person has control over, e.g., is holding in his or her hand. Once the alcohol is inside the body and undergoing the processes of digestion and metabolizing, it no longer constitutes “possession” because the person no longer has control over the alcohol.

The bill would close this loophole by specifying that a person under 21 years of age would be in violation of the MIP laws if he or she had any bodily alcohol content. The bill would incorporate the definition contained in the vehicle code, thereby addressing the issue raised by both the *Rutledge* and *LaJoice* courts that the vehicle code demonstrated a legislative intent to criminalize the presence of alcohol in a minor’s body whereas the MIP statute did not. In short, passage of the bill will ensure that a minor who consumes alcohol in violation of the zero tolerance laws will be prosecutable, regardless of whether or not an officer actually saw the minor drinking an alcoholic beverage or holding onto an alcoholic beverage.

**POSITIONS:**

A representative of the Department of State Police testified in support of the bill. (6-24-03)

A representative of the Mothers Against Drunk Driving (MADD) testified in support of the bill. (6-24-03)

A representative of the Michigan Coalition to Reduce Underage Drinking testified in support of the bill. (6-24-03)

A representative of the Copper County Michigan Coalition to Reduce Underage Drinking testified in support of the bill. (6-24-03)

A representative of the Statewide Work Group testified in support of the bill. (6-24-03)

Analyst: S. Stutzky

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.