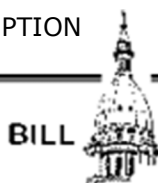




Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536



BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

Senate Bill 258 (as reported without amendment)
Sponsor: Senator Rick Jones
Committee: Judiciary

Date Completed: 8-9-11

RATIONALE

The Michigan Liquor Control Code includes penalties for a minor's purchase, consumption, or possession of alcohol (commonly referred to as a "minor in possession" or MIP violation). The Code also provides a penalty for a minor who has any bodily alcohol content (commonly referred to as a "zero-tolerance" violation). (Under the Code, "minor" means a person under 21 years of age.) The violations are misdemeanors subject to graduated penalties. The maximum amount of a fine increases for subsequent offenses, and a sentence may include imprisonment for up to 30 days for a second offense or 60 days for a third or subsequent offense, under certain circumstances. In addition, the court may order participation in a substance abuse prevention and treatment program, community service, and substance abuse screening. Many believe that this structured penalty system is harsh enough to serve as a deterrent against minors' committing, or recommitting, alcohol violations. Apparently, however, the penalties also may deter a minor from seeking help if the minor, or his or her friend, has consumed alcohol and needs emergency assistance. It has been suggested that minors who seek police or medical assistance, for themselves or other minors, should be exempt from the penalties for MIP and zero-tolerance violations.

CONTENT

The bill would amend the Michigan Liquor Control Code to exempt a minor from some alcohol-related violations under certain circumstances.

The Code prohibits a minor from purchasing, consuming, or possessing, or attempting to purchase, consume, or possess, alcoholic liquor and from having any bodily alcohol content, except as otherwise provided. Under the bill, none of the following would be considered in violation of those prohibitions:

- A minor who had consumed alcohol and voluntarily presented himself or herself to a health facility or agency for treatment or observation.
- Any minor who accompanied a minor who had consumed alcohol and voluntarily presented himself or herself to a health facility or agency for treatment or observation.
- Any minor who initiated contact with a peace officer or emergency medical services personnel for the purpose of obtaining medical assistance.

Under the bill, "emergency medical services personnel" and "health facility or agency" would mean those terms as defined in the Public Health Code.

(The Liquor Control Code defines "any bodily alcohol content" as either of the following:

- An alcohol content of 0.02 gram or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.
- Any presence of alcohol within a person's body resulting from the consumption of alcohol, other than as part of a generally recognized religious service or ceremony.)

A violation of the MIP or zero-tolerance prohibition is a misdemeanor punishable by a maximum fine of \$100 for a first offense, \$200 for a second offense, or \$500 for a third or subsequent offense, and the offender may be ordered to participate in substance abuse prevention services or treatment, perform community service, and undergo substance abuse screening and assessment. If a repeat offender has violated an order of probation, failed to complete any treatment, screening, or community service ordered by the court, or failed to pay a fine for a prior violation, the sentence may include incarceration for up to 30 days for a second offense or 60 days for a third or subsequent offense.

MCL 436.1703

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Excessive alcohol consumption can lead to a myriad of medical problems, particularly in young drinkers who are not accustomed to alcohol. What some people believe are drinking remedies, such as sleeping it off, drinking strong coffee, or taking a cold shower, are ineffective and may even be harmful. When someone suffers from alcohol poisoning, or other effects of excess consumption of alcohol, it is important that he or she receive medical attention quickly. People often are reluctant to seek help in alcohol-related emergencies, however, because of the potential for criminal sanctions. According to written testimony submitted to the Senate Judiciary Committee by the Associated Students of Michigan State University (ASMSU), 64% of MSU students surveyed said they would not call for help in an alcohol-related medical emergency because they feared legal and university prosecution. When someone is in need of emergency medical care, his or her health, not the potential for criminal liability, should be the primary concern.

By excusing minors from penalties for certain alcohol violations when they sought emergency medical or police assistance for themselves or others, the bill could result in more calls for help, fewer deaths, and less severe illness from alcohol poisoning and

other effects of intoxication. Indeed, according to the ASMSU testimony, similar policies on university campuses have led to more calls for emergency medical services when care is needed. According to a Cornell University research paper published in *The International Journal of Drug Policy* (2006), alcohol-related calls to the Cornell campus's emergency medical services increased by 22% over the first two years of that school's medical amnesty program ("Safety first: A medical amnesty approach to alcohol poisoning at a U.S. university"). Since the problem of underage drinking often is prevalent on college campuses, the movement to promote amnesty from criminal prosecution has occurred largely in campus settings. According to the website for Students for Sensible Drug Policy, an advocacy group based in Washington, D.C., there are at least 91 schools with an alcohol "Good Samaritan" policy, including four in Michigan: Olivet College, Kalamazoo College, Lake Superior State University, and Michigan Technological University.

Rather than leaving this important and effective policy to be adopted by individual institutions of higher education, where it will apply only on their campuses, the State should make a statutory exemption from criminal penalties for MIP and zero-tolerance offenses. The bill thus would give the "amnesty" policy statewide application. The bill would not, however, excuse a minor from liability for more serious alcohol-related offenses, such as drunk driving and disorderly conduct, or violations that often are committed along with alcohol violations, such as assault or destruction of property.

Response: According to a *MIRS Capitol Capsule* article quoting the Howell Police Chief, young people already are willing to seek help for friends who drink too much, and issuing a ticket is done at the officer's discretion ("Republicans Sign On To Underage Immunity Bill", 3-25-11). Reportedly, when an officer is approached by someone in need of help, he or she generally will get that person the needed medical attention first, before giving out any tickets.

Opposing Argument

The bill could lead to abuse of the criminal amnesty it proposes. While encouraging young people in medical trouble to seek emergency assistance is a good concept, the bill could have negative consequences. If

police arrived at a party with underage drinkers, for instance, they all could escape responsibility by claiming they needed medical attention. Such situations could stretch police and emergency response resources too thinly, especially in college towns where a high proportion of the residents are under 21 and, compared with youths elsewhere, may be more likely to use alcohol.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill would have an indeterminate fiscal impact on State and local government. To the extent that the new language reduced the number of misdemeanor convictions in local jurisdictions, local units of government could potentially experience a reduction in incarceration and supervision expenses. Any reduction in convictions also would lead to a corresponding decrease in penal fine revenue.

Fiscal Analyst: Matthew Grabowski

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.