

Legislative Analysis



MIP REVISIONS

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Senate Bill 332 (Substitute S-3 as passed by the Senate)
Senate Bill 333 (Substitute S-1 as passed by the Senate)
Sponsor: Sen. Rick Jones

Analysis available at
<http://www.legislature.mi.gov>

House Committee: Criminal Justice
Senate Committee: Judiciary
Complete to 5-16-16

SUMMARY:

Senate Bill 332 lowers a first violation of the minor in possession law from a misdemeanor to a state civil infraction, eliminates the requirement of a driver license suspension for a state civil infraction, and eliminates a peace officer's authority to arrest a minor based on the results of a PBT, among other things.

Senate Bill 333 would eliminate the mandatory license suspension for a person who has one prior misdemeanor conviction for an MIP violation.

Senate Bill 332 amends the minor in possession law within the Michigan Liquor Control Code to revise the penalties for underage drinking or possession of alcohol (MCL 436.1703). Michigan's "minor in possession" law, or MIP law, prohibits a person under the age of 21 from purchasing, consuming, or possessing alcohol (or attempting to do the same). A person under 21 years of age is also generally prohibited from having any bodily alcohol content. The law, and related penalties and sanctions, apply whether the minor is operating a vehicle, a passenger in a vehicle, or in any setting (e.g., walking, at a party, or inside a dwelling). The bill would revise the penalties (which still apply whether related to a driving or a nondriving offense) as follows:

First violation: A violation would be a state civil infraction (instead of a misdemeanor). The fine would remain the same at not more than \$100, and the minor could receive other sanctions as currently provided; for example, be ordered by the court to participate in substance use disorder services. A minor could be found responsible or admit responsibility *only once* under this provision.

Second violation: If the person had one prior judgment for an MIP, which would include a state civil infraction, a violation would retain the same penalty as currently provided for a second offense: a misdemeanor punishable by imprisonment for not more than 30 days, if certain conditions apply, and/or a fine of not more than \$200, as well as allowable court-ordered sanctions such as community service. (Currently, state civil infractions are not included in LEIN, the Law Enforcement Information Network, so it is unclear how offenses would be tracked.)

Third or subsequent violation: If the person had two or more MIP violations, the current penalty would remain the same: the minor would be guilty of a misdemeanor punishable

by imprisonment for not more than 60 days, if certain conditions apply, and/or a fine of not more than \$500. As currently provided, the court could also impose one or more sanctions.

Other sanctions:

- The court's authority to order a minor who violated the MIP statute to submit to random or regular preliminary chemical breath analysis (PBT) *would not apply* to a violation that is a state civil infraction.
- The Secretary of State's requirement to suspend the driver license of a person who violated the MIP law *would not apply* to a violation that is a state civil infraction (apparently, a misdemeanor violation, whether a driving or nondriving offense, would still be subject to license sanctions per Senate Bill 333).
- The court's authority to order an individual to be screened to see if the individual would benefit from rehabilitative services (such as alcohol or drug education or treatment programs) would apply to either a state civil infraction or misdemeanor case.
- A provision allowing a peace officer to arrest an individual based in whole or in part upon the results of a PBT would be eliminated. (The bill retains the authority of a peace officer who has reasonable cause to believe a minor has consumed alcohol or has any bodily alcohol content to request the minor to submit to a PBT. Further, provisions of the drunk/drugged driving statutes pertaining to roadside sobriety testing should not be affected by elimination of this provision.)
- The results of a PBT would be admissible in a state civil infraction proceeding or criminal prosecution.
- A provision making it a state civil infraction for a minor to refuse to submit to a PBT would be eliminated. (Presumably, provisions within the Michigan Vehicle Code pertaining to roadside sobriety testing would apply in driving-related offenses).

Discharge and dismissal of a MIP misdemeanor

If a minor who has no prior judgments of a misdemeanor MIP violation pleads guilty to a misdemeanor MIP violation, or offers a plea of admission in a juvenile delinquency proceeding for a misdemeanor MIP violation, the court could defer further proceedings and place the minor on probation. Upon successful completion of the probation, the court must discharge the individual and dismiss the proceedings. (Currently, a discharge and dismissal of an MIP violation is available only to an individual who has not been previously convicted of or received a juvenile adjudication for an MIP violation.) As is current law, an individual may receive only one discharge and dismissal of an MIP violation. Further, the discharge and dismissal would count as a prior judgment for the purposes of determining repeat offenses.

Definition:

"Prior judgment" would mean a conviction, juvenile adjudication, finding of responsibility, or admission of responsibility for any of the following, whether under a law of the state or

a local ordinance, U.S. law, or law of another state, that substantially corresponds to a Michigan law:

- The MIP law or selling or furnishing alcohol to a minor by any person or liquor licensee or employee of a licensee.
- Transporting or possessing an open container of alcohol in a vehicle or a violation of the drunk/drugged driving statutes.
- Operating a motorboat, ORV, or snowmobile in violation of the drunk/drugged laws for sportscraft.
- Hunting while intoxicated or possessing a firearm while intoxicated.

Senate Bill 333 amends the Michigan Vehicle Code (MCL 257.319). Currently, the Secretary of State (SOS) must suspend the license of a person convicted of repeat violations of the minor in possession (MIP) law, whether or not the violation involved operation of a motor vehicle. If the person has one prior conviction, the suspension is for 90 days. Under the bill, this provision would no longer apply to a person convicted of an MIP offense, even if the offense were related to operating a vehicle. Thus, a person who has one state civil infraction and one misdemeanor conviction for an MIP violation (driving or nondriving) would not incur a license suspension for what would in effect be a third MIP violation.

However, under the bill, if the person has two or more prior convictions for an MIP offense (one state civil infraction and two or more convictions of the MIP law per SB 332), whether driving or nondriving, the person's license would be suspended for one year; the SOS could issue a restricted license after 60 days. The bill is tie-barred to Senate Bill 332.

FISCAL IMPACT:

Senate Bill 332: The bill would have an indeterminate fiscal impact on the state and on local units of government. It is likely the fiscal impact would be a reduction in court and incarceration costs due to the following: change in the way that first offenses are classified, from misdemeanors to civil infractions; eligibility for discharge of offenses and dismissal of proceedings; peace officers no longer being able to arrest minors based solely on failed PBTs; and elimination of civil infractions when minors refuse PBTs with nondriving offenses.

Senate Bill 333: The bills would have a negative fiscal impact on the Department of State. With the increased number of violations before having a license suspended, the department would lose an indeterminate amount of revenue. License reinstatement fees are \$125. A calculation cannot be made about how many people who paid the initial reinstatement fee would not have to pay it under the new guidelines.

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Robin Risko
Perry Zielak

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