



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

BILL



ANALYSIS

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

Senate Bills 332 and 333 (as introduced 5-14-15)

Sponsor: Senator Rick Jones

Committee: Judiciary

Date Completed: 6-8-15

CONTENT

Senate Bill 332 would amend the Michigan Liquor Control Code to do the following:

- Designate a first or second violation by a minor purchasing, possessing, or consuming alcohol, or having any bodily alcohol content (i.e., a minor in possession (MIP)), as a State civil infraction rather than a misdemeanor.
- Specify that a provision allowing the deferral and dismissal of a violation described above would apply only to a misdemeanor violation.
- Limit a court's ability to order random or regular preliminary chemical breath analysis for a violation described above to a person subject to a misdemeanor conviction or juvenile adjudication.
- Allow a peace officer to request, rather than require, a minor to submit to a preliminary chemical breath analysis if the officer has reasonable cause to believe the minor has consumed alcohol.
- Allow the admissibility of the results of a preliminary chemical breath analysis or other acceptable blood alcohol test in a State civil infraction proceeding or criminal prosecution.
- Delete authorization for a peace officer to arrest a person based on the results of a preliminary chemical breath analysis.
- Delete a provision specifying that it is a State civil infraction, subject to a civil fine, for a minor to refuse to submit to a breath analysis.

Senate Bill 333 would amend the Michigan Vehicle Code to do the following:

- Delete a required driver license suspension for a person who commits certain alcohol-related violations and has one prior MIP conviction.
- For certain individuals convicted of selling or furnishing alcohol to a minor, increase the number of violations that triggers a 180-day license suspension from two to three.

Senate Bill 333 is tie-barred to Senate Bill 332.

Under the Michigan Liquor Control Code, "minor" means an individual under 21 years of age.

Senate Bill 332

MIP Penalties

Section 703(1) of the Liquor Control Code prohibits a minor from purchasing or attempting to purchase, consuming or attempting to consume, or possessing or attempting to possess alcoholic liquor, or from having any bodily alcohol content, except as otherwise provided. (These violations, collectively, are often referred to as MIP violations.)

An MIP violation is a misdemeanor punishable by a maximum fine of \$100. A second violation is a misdemeanor punishable by up to 30 days' imprisonment, but only if the court finds that the minor violated an order of probation, failed to successfully complete any court-ordered treatment, screening, or community service, or failed to pay any fine for the conviction or juvenile adjudication, and/or a maximum fine of \$200. A third or subsequent violation is a misdemeanor punishable by up to 60 days imprisonment, but only if the court finds that the minor violated an order or failed to pay a fine (as described above for a second violation), and/or a maximum fine of \$500.

Under the bill, for a first MIP violation, a minor would be responsible for a State civil infraction and would have to be fined up to \$100. For a second violation, a minor would be responsible for a State civil infraction and would have to be fined up to \$200. The bill would retain the misdemeanor penalty for a third or subsequent violation.

Deferral & Dismissal

Under the Code, if a person who has not previously been convicted of or received a juvenile adjudication for a violation of Section 703(1) pleads guilty to or offers a plea of admission in a juvenile delinquency proceeding for a violation of that provision, the court may defer proceedings and place the person on probation without entering a judgment of guilt in a criminal proceeding or a determination in a juvenile proceeding. If the person fulfills the terms and conditions of the probation, the court must discharge the individual and dismiss the proceedings without adjudication of guilt or a determination in a juvenile proceeding.

Under the bill, the deferral and dismissal provision would apply only for a misdemeanor violation of Section 703(1) (i.e., a third or subsequent MIP violation).

Breath Analysis

The Code allows a court to order a person subject to a conviction or juvenile adjudication of, or placed on probation regarding, an MIP violation to submit to a random or regular preliminary chemical breath analysis. Under the bill, that provision would apply to a person subject to a misdemeanor conviction or juvenile adjudication of, or placed on probation regarding, an MIP violation.

Under the Code, a peace officer who has reasonable cause to believe a minor has consumed alcoholic liquor or has any bodily alcohol content may require the minor to submit to a preliminary chemical breath analysis. The bill would allow a peace officer to request, rather than require, the minor to submit to the breath analysis.

The Code provides that the results of a preliminary chemical breath analysis or other acceptable blood alcohol test are admissible in a criminal prosecution to determine whether the minor has consumed or possessed alcoholic liquor or had any bodily alcohol content. Under the bill, those results would be similarly admissible in a State civil infraction proceeding.

The Code allows a peace officer to arrest an individual based in whole or in part upon the results of a preliminary chemical breath analysis. A minor who refuses to submit to a breath analysis is responsible for a State civil infraction and may be ordered to pay a civil fine of up to \$100. The bill would delete those provisions.

Senate Bill 333

The Vehicle Code requires the Secretary of State (SOS) to suspend a person's driver license for 90 days for a violation of any of the following offenses, if the person has one prior conviction for any of those offenses:

- Transportation or possession of alcoholic liquor in an open or uncapped container or upon which the seal has been broken within the passenger area of a vehicle.

- Transportation or possession of alcoholic liquor in a motor vehicle by a person under 21 years of age.
- Minor in possession.

Under the bill, that license sanction would apply only to a person who committed one of those offenses and had one prior conviction for either of the first two offenses listed above. (The bill would retain a one-year license suspension for a person who committed one of those offenses and had two or more prior convictions for any of the listed offenses.)

The Liquor Control Code prohibits the sale or furnishing of alcohol to a minor and designates a violation as a misdemeanor. Under the Vehicle Code, for a second or subsequent violation by an individual who is not a retail licensee or a retail licensee's clerk, agent, or employee, the SOS must suspend the person's license for 180 days. Under the bill, this suspension would apply in the case of a third or subsequent violation.

MCL 436.1703 (S.B. 332)
257.319 (S.B. 333)

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

Senate Bill 332

The bill could reduce total incarceration and court costs for State and local government. According to Michigan State Police data, between 2009 and 2013, a total of approximately 40,000 arrests were made for the purchase, consumption, or possession of alcohol by a minor for a first, second, third, or subsequent offense. According to the State Court Administrative Office, for calendar year 2014, for the courts that submitted data, there were approximately 9,300 convictions for a first offense, 365 convictions for a second offense, and 176 convictions for a third offense. If the proposed change in offense classification resulted in lower court and incarceration costs, and civil infraction revenue remained the same, there could be a net benefit to local law enforcement entities.

Senate Bill 333

The bill would result in the loss of an estimated \$195,000 in restricted revenue annually for the Department of State. According to fiscal year 2013-14 data, the Department collected nearly \$195,000 in reinstatement fees from just under 1,600 drivers whose driver licenses were suspended due to having one prior conviction for an MIP violation. The Department collects a \$125 reinstatement fee from people whose driver licenses have been revoked or suspended. Revenue from the reinstatement fee is used to fund the Department's operations. The estimated loss in revenue from the bill's deletion of the required license suspension for a person with one prior MIP conviction is not absorbable within current annual appropriations and could result in delaying future improvements or the layoff of up to 2.0 FTE positions.

The bill also would raise from two violations to three the threshold for suspending the license of a person convicted of purchasing alcohol for minors. The Department of State does not track these license suspensions, but the revenue loss resulting from the proposed change likely would be negligible.

Fiscal Analyst: Joe Carrasco
John Maxwell

SAS\S1516\s332sa

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.