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## BILL ANALYSIS



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Senate Bills 332 and 333 (as enacted)  
Sponsor: Senator Rick Jones  
Senate Committee: Judiciary  
House Committee: Criminal Justice

**PUBLIC ACTS 357 & 358 of 2016**

Date Completed: 3-27-17

**CONTENT**

**Senate Bill 332 amends the Michigan Liquor Control Code to do the following:**

- Designate a minor's first violation for purchasing, possessing, or consuming alcohol, or having any bodily alcohol content (i.e., a minor in possession or MIP), as a State civil infraction rather than a misdemeanor.
- Allow the deferral and dismissal of an MIP violation only for a misdemeanor violation that occurs after one prior judgment for MIP or another specified alcohol-related violation.
- Limit a court's ability to order random or regular preliminary chemical breath analysis for an MIP violation 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 that the minor has consumed alcohol.
- Allow the results of a preliminary chemical breath analysis or other acceptable blood alcohol test to be admitted 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 amends the Michigan Vehicle Code to define "prior conviction" as a misdemeanor conviction or a civil infraction determination for an MIP violation, for purposes of a required driver license suspension for a person who commits certain alcohol-related violations or an MIP violation and has one or more prior convictions.**

The bills will take effect on January 1, 2018.

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 a maximum fine of \$200 and/or up to 30 days' imprisonment. The term of imprisonment applies, however, 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. 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 for a second violation), and/or a maximum fine of \$500.

Under the bill, for a first MIP violation, a minor is responsible for a State civil infraction and must be fined up to \$100. A minor may be found responsible or admit responsibility for an MIP violation that is a State civil infraction only once.

The bill retains the misdemeanor penalties for a second, third, or subsequent violation but refers to an MIP violation that occurs after one "prior judgment" or after two or more prior judgments.

The bill defines "prior judgment" as a conviction, juvenile adjudication, finding of responsibility, or admission of responsibility for any of the following, whether under a Michigan law, or a substantially corresponding local ordinance, U.S. law, or law of another state:

- MIP; furnishing fraudulent ID to a minor, or a minor's use of fraudulent ID, to purchase alcohol; selling or furnishing alcohol to a minor; or selling, serving, or furnishing alcohol to an intoxicated person.
- Possessing open alcohol in a vehicle; transporting or possessing alcohol in a vehicle by a person under 21 years of age; or operating a motor vehicle while under the influence of or impaired by alcohol, a controlled substance, or a combination of both.
- Operating a motorboat, off-road vehicle, or snowmobile while under the influence of alcohol and/or a controlled substance.
- Hunting while drunk or intoxicated, or possession or use of a firearm by a person who is under the influence of or impaired by alcohol and/or a controlled substance.

#### 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 applies only for a misdemeanor violation of Section 703(1) that occurs after one prior judgment. The terms and conditions of probation under the deferral provision must include the sanctions set forth for an MIP violation that occurs after two or more prior judgments.

#### 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 applies to a person subject to a misdemeanor conviction or juvenile adjudication of, or placed on probation regarding, an MIP violation.

Under the Code, if a peace officer has reasonable cause to believe that a minor has consumed alcoholic liquor or has any bodily alcohol content, the officer may require the minor to submit to a preliminary chemical breath analysis. The bill allows 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 also will be 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 deletes 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 any of the following offenses, if the person has one prior conviction for any of those offenses:

- Transportation or possession of alcoholic liquor in a container that is open or uncapped 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, for purposes of that provision, "prior conviction" means either a misdemeanor conviction or a civil infraction determination for a violation of Section 703(1) of the Liquor Control Code (MIP).

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

Legislative Analyst: Patrick Affholter

### **FISCAL IMPACT**

#### **Senate Bill 332**

The bill may 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 change in offense classification results in lower court and incarceration costs, and civil infraction revenue remains the same, there may be a net benefit to local law enforcement entities.

#### **Senate Bill 333**

The bill will result in the loss of an estimated \$170,800 in restricted revenue annually for the Department of State. According to fiscal year 2014-15 data, the Department collected nearly \$171,000 in reinstatement fees from approximately 1,367 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 cannot be absorbed within current annual appropriations and may result in the delay of future improvements or the layoff of up to 2.0 FTE employees.

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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.