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Senate Bill 95 (Substitute S-3 as passed by the Senate)

Sponsor: Senator Rudy J. Nichols

Committee: Judiciary

Date Completed: 4-4-89

RATIONALE

The Michigan Vehicle Code underwent extensive revisions in 1982. Reportedly, many district court judges feel that those changes were constructed inconsistently. For example, the Code requires license revocation for three convictions of impaired driving, but not for a combination of three convictions for impaired driving and driving under the influence, which is a more serious offense. Many also believe that first-time offenders should receive an automatic suspension of driving privileges; that prior convictions should be considered for up to 10, rather than seven, years; that the locations of prohibited drunk driving should be specified more broadly; that illegal transport of alcohol provisions should be transferred to the Code from the Michigan Liquor Control Act; and that the Code's provisions pertaining to an accused individual's rights regarding blood alcohol level testing should be clarified.

CONTENT

The bill would amend the Michigan Vehicle Code to do all of the following:

- Revise some of the penalty provisions for, and the scope of the offenses of, operating a vehicle while under the influence of liquor or a controlled substance, or while "visibly impaired".
- Repeal and re-enact certain provisions of the Michigan Liquor Control Act relative to the transporting of liquor and provide penalties for those violations.
- Specify the criteria by which a court could set aside the Secretary of State's license denial or

revocation determination.

- Revise penalties for driving with a suspended or revoked license.
- Specify procedures and requirements pertaining to chemical analysis of blood.
- Specify that an attempt to commit an offense punishable under the Code would have to be punished as if the offense were completed, except in the case of civil infractions.
- Make other provisions relative to the definition of "law of another state"; immediate suspension of licenses for certain repeat offenses; multiple convictions for a single incident; restricted licenses; time limits for certain actions; and the repeal of an obsolete provision of the Code.

The bill would take effect on October 1, 1989, and is tie-barred to Senate Bill 218, which would amend Chapter 1 of the Revised Statutes of 1846 to provide that if a provision of law is amended and in substance re-enacted, a reference to the amended provision in any other law would be considered a reference to the re-enacted provision.

Penalty Provisions

The bill would increase from seven to 10 years the period during which a single prior conviction for operating a vehicle while under the influence of liquor or a controlled substance (OUIL), while having a blood-alcohol content (BAC) of .10%, or while "visibly impaired" due

to alcohol or a controlled substance (OWI) could lead to a penalty greater than that imposed for a first offense. Currently, a repeat offense is punishable by imprisonment for up to one year, a maximum fine of \$1,000, or both. The bill would retain this penalty, but set a minimum fine of \$200.

The bill also would make it a misdemeanor for an owner or person in charge or control of a vehicle to allow a person under the influence or visibly impaired to drive that vehicle. The offense would be punishable by up to 90 days' imprisonment, a fine of between \$100 and \$500, or both. The court could order the person convicted to pay the costs of the prosecution.

Both OUIL and OWI offenses would apply to the operation of a vehicle on a highway or other place "generally accessible to motor vehicles", rather than "open to the general public".

In addition, the bill would require a court to consider all prior convictions that were currently on a person's Michigan driving record, except those determined to be constitutionally invalid, when sentencing the person for OUIL or OWI. Further, the bill specifies that a court could not order the Secretary of State to issue a restricted license to a person convicted of OUIL if he or she had one such prior conviction, or two or more prior convictions for OWI, within the past 10 years. (Under current law, the length for consideration of such prior convictions is seven years, and the law is silent on whether the person can be issued a restricted license.) Finally, the bill would prohibit the issuance of a restricted license during the first 30 days of a license suspension period for an OUIL or OWI offense. Consequently, there would be a minimum 30-day suspension of all driving privileges for a conviction of either offense.

The bill would require that a court, before accepting a guilty plea for OUIL or OWI, advise the accused of the maximum possible penalties.

Transporting Alcohol

The bill would repeal two provisions of the Michigan Liquor Control Act and re-enact them

within the Code. One provision prohibits people under 21 years of age from knowingly transporting or possessing alcohol in a vehicle unless employed by a liquor licensee, the Liquor Control Commission (LCC), a common carrier designated by the LCC, or an agent of the LCC and the transportation or possession was in the course of that employment. The provision specifies legal procedures for impoundment of the vehicle used by the minor in the commission of the offense, if the vehicle were used with the owner's express consent or titled in the name of the convicted person and were not needed in the pursuit of the owner's employment or the operation of the owner's business (MCL 436.33a). The other provision prohibits a person from transporting or possessing open containers of alcohol in a vehicle (MCL 436.34a).

In addition, the bill would require the Secretary of State to suspend the license of a person under 21 years of age who was convicted of illegally transporting alcohol. The suspension would have to be for 90 days for a first offense; six months for a second offense; and one year for a third or subsequent offense. A person convicted of transporting or possessing open containers of alcohol in a vehicle would have to be assessed two points on his or her Michigan driving record. Under the bill, both offenses would be misdemeanors.

Set-Aside Criteria

The bill would allow a court to set aside a Secretary of State determination to deny or revoke a license if it found that "substantial rights of the petitioner" had been prejudiced because the determination was in violation of the Constitution or a statute or in excess of the Secretary of State's statutory authority or jurisdiction; was made upon an unlawful procedure that resulted in material prejudice to the petitioner; was not supported by competent, material, and substantial evidence, or was affected by other substantial and material error of law; or was arbitrary, capricious, or an abuse or unwarranted exercise of discretion.

Driving With Revoked/Suspended License

The bill provides that a violation of driving with a revoked or suspended license would be punishable by up to 90 days' imprisonment, a

maximum fine of \$500, or both. (The current penalty is imprisonment for three to 90 days, a maximum fine of \$100, or both.) A second such offense could be punished by imprisonment for up to one year, a maximum fine of \$1,000, or both. (The current penalty is imprisonment for five days to one year, a maximum fine of \$500, or both.) In addition, the Code requires doubling the length of a license suspension or revocation for such a violation; the bill specifies that this provision would apply "only if the violation occurs during a suspension of definite length or before the person is approved for a license following a revocation".

Chemical Analysis

Currently, the Code provides that a person arrested for a drug- or alcohol-related driving offense must be informed of the right to demand that a person of his or her own choice administer a test for the presence of alcohol or a controlled substance. The bill would delete that provision and specify that a person arrested for OUIL, OWI, or other drug- or alcohol-related driving offenses has the right to choose a second test of his or her own choice after taking the test administered at the request of a law enforcement officer. The Code also provides that if a jury instruction regarding a defendant's refusal to submit to a test is requested by either the prosecutor or the defendant, then the jury must be given a specific instruction that such refusal is within his or her statutory rights and that the refusal cannot be considered in determining guilt or innocence. The bill would delete that provision and the language of the jury instruction and specify that a person's refusal to take a chemical test could be admitted as evidence, but only for the limited purpose of showing that a test was offered to the defendant; the jury would have to be instructed accordingly.

The Code requires that if a driver dies in an automobile accident, a sample of the decedent's blood must be drawn and analyzed for the presence of alcohol or a controlled substance. The bill would require that the medical examiner give the results of such a chemical analysis to the law enforcement agency that was investigating the accident and that the agency forward those results to the State Police.

In addition, the Code requires the suspension of a person's driver's license if he or she refuses to submit to a chemical test (i.e., a test and analysis of blood, urine, or breath, other than the preliminary breath analysis) and does not request a hearing within 14 days of receiving notice the right to a hearing and the consequences of not requesting one. The Code also provides that, after such a hearing, the Secretary of State may suspend or deny issuance of the person's license. The bill would require suspension or denial of issuance if the person who requested the hearing did not prevail. Also, the bill would allow a peace officer, with the prosecuting attorney's consent, to petition the Circuit Court for a review of the hearing, if there were a determination in favor of the person who requested the hearing.

Other Provisions

Definition. The bill would define "law of another state" to include a law or ordinance of another state or a local unit of government in another state.

License Suspension. The bill would require the Secretary of State to revoke a person's driver's license, if he or she had any combination of three convictions of OUIL or OWI within 10 years. Current law requires such revocation for three OWI convictions, but not for a combination of two OWI convictions and one OUIL conviction. Also, the Code requires the immediate suspension of a juvenile's driver's license upon the conviction of the juvenile of three or more charges of reckless driving with the preceding 12 months. The bill would change that to three convictions within the previous 36 months.

In addition, the Code requires the Secretary of State to suspend a person's driver's license for six to 18 months following two convictions, within seven years, of OWI or one conviction of OUIL and one conviction of OWI, within seven years. Under the bill, the suspension would be from two months to two years for multiple convictions within the preceding 10 years. If the person were convicted of OWI and had one prior conviction within 10 years of either OWI or OUIL, however, the court would have to order a suspension of six months to two years.

Multiple Convictions. The bill specifies that

multiple convictions resulting from the same incident would have to be treated as a single violation for the purpose of determining prior convictions.

Restricted Licenses. The Code prohibits the issuance of a restricted license to someone whose driver's license was suspended for OUIL or OWI unless the person states under oath, and the court finds, that he or she is "unable to take public transportation to and from his or her work location, place of alcohol or drug education treatment, or educational institution" and family members or others are unable to provide such transportation. The bill would add his or her probation department and court-ordered community service program to that list of destinations.

Time Limits. The Code allows a person to petition a court to review the denial, suspension, restriction, or revocation of his or her driver's license. The bill specifies that, after the court's order was duly entered, the petitioner would have to file a copy of the order with the Secretary of State's office in Lansing within seven days after the order's entry. (Currently, the petitioner is required to file it "immediately".) Also, the bill would set a 60-day limit after the Secretary of State's determination to petition a court for review.

Repealer. The bill would repeal a section of the Code (MCL 257.625j) that established and specified the duties of a "Drunk Driving Task Force", which, under the Code, could exist only until September 30, 1985.

MCL 257.303 et al.

FISCAL IMPACT

The bill would have an indeterminate impact on State and local units of government. Total costs would depend on the number of convictions under this bill.

ARGUMENTS

Supporting Argument

The bill would make technical changes to the Code that would make it generally more readable and consistent. By combining the licensing sanctions for the various drunk driving offenses into one section, the bill would clarify which suspension and revocation

sanctions apply to which offenses. Also, the bill would incorporate OUIL and OWI prohibitions into one section; specify that multiple convictions for one offense would have to be treated as a single violation; clarify a person's rights regarding blood alcohol testing and the admissibility of refusing a test; and allow a police officer to appeal the Secretary of State's determination of license suspension or revocation. Together, these revisions would make the Code's drunk driving provisions more workable and easier to understand.

Supporting Argument

The bill would send a message that drunken drivers will be handled severely in the State of Michigan. Several of its provisions would deal with offenders more seriously than they have been treated up to now. For instance, some accused offenders reportedly have been acquitted when they drove in trailer park driveways or apartment complex parking lots because these locations were not considered "open to the general public"; the bill would preclude such dismissals by changing the standard to areas that are "generally accessible to motor vehicles". The bill also would allow consideration of prior offenses for a longer period, thereby subjecting subsequent offenders to stiffer penalties. In addition, by allowing the issuance of a restricted license only after the first 30 days of a license suspension period, the bill would prevent convicted individuals from getting right back on the road. Further, transferring the illegal transport provisions from the Michigan Liquor Control Act would make those offenders subject to the Code's license suspension and driving record points sanctions.

Response: While the bill's tougher provisions are laudable, they could be stronger. Several states reportedly have lowered (or are considering lowering) their BAC standard for OUIL offenses to .08%. Michigan should follow suit.

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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.