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BILL ANALYSIS

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Senate Bill 95

Sponsor: Senator Rudy J. Nichols

Committee: Judiciary

Date Completed: 2-16-89

SUMMARY OF SENATE BILL 95 as introduced 2-2-89:

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

- Revise some of the penalty provisions for 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 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.
- Repeal certain provisions of the Code and the Michigan Liquor Control Act.
- Make other provisions relative to the definition of "law of another state"; immediate suspension of licenses for certain repeat offenses; and time limits for certain actions.

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.

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, as part of a sentence for either offense, the Code allows the court to require that a convicted individual drive only a vehicle equipped with an ignition interlock device. While the bill would retain this sentencing option, it would require that the device prevent the vehicle's operation if the person had a blood alcohol content of .10% or more; the Code currently requires the devices to prevent operation if the person has a BAC of .02% or more.

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 of 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), or an agent of the LCC and in the course of that employment. The other provision prohibits a person from transporting or possessing open containers of alcohol in a vehicle.

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.

#### 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 would require 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".

### Repealers

The bill would repeal a section of the Code (MCL 257.625j) that is obsolete. The section established and specified the duties of a "Drunk Driving Task Force", which, under the Code, could only exist until September 30, 1985. In addition, the bill would repeal a section of the Michigan Liquor Control Act (MCL 436.33a) that specifies legal procedures for punishing a minor who transported or possessed alcohol in a vehicle. (Part of the section would be re-enacted within the Code by the bill.)

### 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.

Immediate Suspension. 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 suspension of a person's driver's license for at least six months following two convictions, within seven years, of OWI or one conviction of OUIL and one conviction of OWI. The bill would change the minimum length of suspension to two months for multiple convictions within the preceding 10 years.

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.

MCL 257.303 et al.

Legislative Analyst: P. Affholter

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.

Fiscal Analyst: F. Sanchez

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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.