

FIRST ANALYSIS

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SFA



BILL ANALYSIS

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Senate Bill 268 (Substitute S-1 as reported)
Senate Bill 269 (Substitute S-1 as reported)
Senate Bill 271 (Substitute S-1 as reported)
Senate Bill 625 (Substitute S-1 as reported)
Senate Bill 626 (Substitute S-1 as reported)
Senate Bill 627 (Substitute S-1 as reported)
Senate Bill 870 (Substitute S-1 as reported)
Senate Bill 953 (Substitute S-1 as reported)
Senate Bills 989, 990, and 991 (as reported without amendment)
Sponsor: Senator Bill Bullard, Jr. (Senate Bills 268 and 990)
 Senator Michael J. Bouchard (Senate Bills 269, 271, and 626)
 Senator Loren Bennett (Senate Bill 625)
 Senator Mike Rogers (Senate Bill 627)
 Senator Joel D. Gougeon (Senate Bill 870)
 Senator William Van Regenmorter (Senate Bills 953 and 989)
 Senator Robert Geake (Senate Bill 991)

Committee: Judiciary

Date Completed: 3-23-98

RATIONALE

Michigan's drunk driving laws have undergone extensive revision in recent years. The latest changes were contained in Public Acts 490 and 491 of 1996, which took effect on April 1, 1997. Among other things, the 1996 laws permit a court to order that a vehicle be forfeited or returned to the lessor if the vehicle's owner or lessee is convicted of operating under the influence of alcohol and/or a controlled substance (OUIL), operating while visibly impaired by alcohol and/or a controlled substance (OWI) within seven years of one prior conviction or within 10 years of two or more prior convictions, or OUIL or OWI that caused the death or serious impairment of a body function of another person.

Although the earlier laws stiffened criminal penalties and license sanctions for drunk drivers, habitual drunk driving apparently has remained a problem. An additional risk is posed by individuals who continue to drive after their license has been suspended or revoked. According to the Secretary of State, a recent study released by the Century Council entitled, "Combating Hardcore Drunk Driving", reported the following: Drivers with bodily alcohol content over 0.15% comprise only 1% of all

drivers on weekend nights, but are involved in nearly 50% of all fatal crashes during these periods, and other research shows that approximately 30% of all drinking drivers arrested for OWI have already been caught in the past by the police and sanctioned by judicial and administrative agencies. The Secretary of State also has reported that a University of Michigan Transportation Research Institute study "...revealed that approximately 30 percent of the arrested drunk drivers were driving on a suspended or revoked license".

When the 1996 amendments were enacted, it was argued that vehicle forfeiture would help to take away the tool with which drunk drivers commit their crime, and could deter repeat offenses. Apparently, however, not many vehicles are being forfeited under the new laws. According to an article in *Michigan Lawyers Weekly* (11-17-97), calls to 15 district courts showed that only about eight cars had been forfeited in the first seven months that the laws were in effect. It has now been suggested individuals who repeatedly drive drunk or without a license should be subject to a range of sanctions, including vehicle immobilization

and restricted plates, leading up to mandatory forfeiture for some repeat offenders. Additional measures, such as requiring offenders to reimburse local governments for emergency response costs and to pay child support if a parent or guardian was killed or seriously injured, also have been suggested.

CONTENT

Senate Bill 268 (S-1) would amend the Natural Resources and Environmental Protection Act to establish penalties for someone who caused a serious impairment of a body function of another person as a result of operating an off-road vehicle while under the influence of alcohol or drugs.

Senate Bill 269 (S-1) would amend the Code of Criminal Procedure to allow a court to order a person convicted of drunk driving to reimburse the State or a local unit of government for emergency response expenses.

Senate Bill 271 (S-1) would amend the Michigan Penal Code to allow a court to order a person to pay child support to the parent or guardian of a child of anyone who died or suffered a long-term incapacitating injury as a result of a drunk driving offense.

Senate Bills 625 (S-1), 626 (S-1), 627 (S-1), 870 (S-1), and 953 (S-1) would amend the Michigan Vehicle Code to revise the criminal penalties, license sanctions, and vehicle sanctions for operating a vehicle while under the influence of intoxicating liquor, a controlled substance, or a combination of intoxicating liquor and a controlled substance; operating while visibly impaired due to the consumption of intoxicating liquor and/or a controlled substance; OUIL or OWI resulting in the death or serious impairment of a body function of another person; operating a commercial vehicle while intoxicated; the operation of a vehicle by a person under 21 having any body alcohol content (BAC); and operating a vehicle without a license. The bills would do the following:

- Require the confiscation of a vehicle's registration plate and the issuance of a temporary plate when a person was stopped for a moving violation or arrested under certain circumstances; and require the court (depending upon the number of prior offenses) to order that a restricted plate be issued, that the

vehicle be immobilized, that the operation of the vehicle be restricted, or that the vehicle be forfeited.

- Require a court to order restricted plates or vehicle immobilization for OUIL or OWI causing death or serious impairment within seven years of a prior conviction, and to order vehicle forfeiture if the violation occurred within 10 years of two or more prior convictions; and permit the court to order a person to pay child support to the parent or guardian of a child of a person who died or suffered a long-term incapacitating injury as a result of the violation.
- Prohibit a person from committing a drunk driving offense while a child under 16 was in the vehicle (referred to below as "child endangerment").
- Define "prior conviction" as OUIL, OWI, OUIL or OWI causing death or serious impairment, child endangerment, commercial vehicle drunk driving, negligent homicide, manslaughter, or murder resulting from the operation of a vehicle, or operation of a vehicle by a minor with any BAC (for purposes of that violation).
- Require an added suspension of 30 days for driving while a license was suspended or denied.
- Require license revocation for at least 10 years for OUIL or OWI causing death or serious impairment, negligent homicide, manslaughter, or murder while driving a commercial motor vehicle.
- Establish felony penalties for a commercial drunk driving offense within 10 years of two or more prior convictions.
- Allow the Secretary of State to refuse to conduct a transaction requiring a monetary payment, if a person drove without a license three times in the prior seven years.

Senate Bills 989 (S-1), 990 (S-1), and 991 (S-1) would amend various acts to delete provisions requiring driver's license sanctions for certain alcohol-related offenses; and to require that sanctions be imposed as provided in the Michigan Vehicle Code.

All of the bills include an effective date of May 1, 1998, and are tie-barred to each other.

Senate Bill 268 (S-1)

The bill would amend the Natural Resources and Environmental Protection Act to establish penalties for a person who caused a serious impairment of a body function of another person as a result of operating an off-road vehicle (ORV) while under the influence of intoxicating liquor and/or a controlled substance. This offense would be a felony punishable by imprisonment for up to five years, a fine of at least \$1,000 but not more than \$5,000, or both. "Serious impairment of a body function" would include, but not be limited to, one or more of the following:

- Loss of a limb or use of a limb.
- Loss of a hand, foot, finger, or thumb or use of a hand, foot, finger, or thumb.
- Loss of an eye or ear or use of an eye or ear.
- Loss or substantial impairment of a bodily function.
- Serious visible disfigurement.
- A comatose state lasting more than three days.
- Measurable brain damage or mental impairment.
- A skull fracture or other serious bone fracture.
- Subdural hemorrhage or subdural hematoma.

Senate Bill 269 (S-1)

The bill would amend the Code of Criminal Procedure to allow a court to order a person convicted of certain alcohol- or drug-related driving offenses to reimburse the State or a local unit of government (a city, village, township, or county) for medical and personnel expenses of an emergency response to the incident out of which the conviction arose, and expenses incurred in relation to that incident and to the prosecution of the person. The bill would apply to offenses involving the operation of a motor vehicle, snowmobile, ORV, aircraft, vessel, or locomotive engine. A local unit could elect to be reimbursed for expenses under a local ordinance in lieu of being reimbursed under the bill.

A reimbursement requirement could be imposed as part of a sentence for a person convicted of OUIL, OWI, or child endangerment, when operating the types of vehicles to which the bill would apply. In addition, reimbursement could be ordered for felonious driving, negligent homicide, or manslaughter, that resulted from the operation of a motor vehicle, snowmobile, ORV, aircraft, boat, or train while the operator was impaired by or under the influence of liquor or a controlled substance, or had an unlawful blood alcohol content.

The expenses for which reimbursement could be ordered include the salaries or wages, including overtime pay, of law enforcement personnel for time spent responding to and investigating the incident, arresting the person convicted, processing the person after the arrest, preparing reports on the incident, and collecting and analyzing evidence, including determining blood alcohol content and determining the presence of and identifying controlled substances in the blood. A reimbursement order also could cover the salaries and wages and other compensation of fire department and emergency medical service (EMS) personnel, including volunteer fire fighters or volunteer EMS personnel, for time spent responding to the incident and providing related services. In addition, a reimbursement order could cover the cost of medical supplies lost or used by fire department and EMS personnel, including volunteers, in providing services related to the incident.

If police, fire department, or EMS personnel from more than one unit of government incurred reimbursable expenses, the court could order the person convicted to reimburse each unit of government for its expenses.

The reimbursement would have to be paid to the clerk of the court, who would have to transmit the appropriate amount to the unit or units of government named in the reimbursement order. Unless specified otherwise by the court, the reimbursement ordered under the bill would have to be made immediately. The court could require, however, that the person reimburse the costs within a specified period or in specified installments.

If the convicted person were placed on probation or paroled, any reimbursement that was ordered would have to be a condition of the probation or parole. If the person failed to comply with the reimbursement order, and had not made a good faith effort to do so, parole or probation could be revoked. When determining whether to revoke probation or parole, the court or parole board would have to consider the person's employment status, earning ability, number of dependents, and financial resources, the willfulness of the failure to pay, and other special circumstances that could have a bearing on his or her ability to pay. A person could not be imprisoned, jailed, or incarcerated for failure to make a reimbursement unless the court determined that he or she had the resources to pay and had not made a good faith effort to do so.

A reimbursement order could be enforced by the prosecuting attorney or the State or local unit of government named in the order to receive reimbursement, in the same manner as a judgment in a civil action.

Senate Bill 271 (S-1)

The bill would amend the Michigan Penal Code to allow a court to order a person to pay child support to the parent or guardian of a minor child of any person who died or suffered a long-term incapacitating injury as a result of an alcohol- or drug-related driving offense. The court would have to determine the amount of child support by applying the child support formula developed under the Friend of the Court Act, considering the convicted defendant as if he or she were a parent of the child.

Specifically, after notice and an opportunity for a hearing, a person could be ordered to pay child support, as described above, if he or she were convicted of first- or second-degree murder, manslaughter, or negligent homicide with a vehicle, by operating a motor vehicle while under the influence of intoxicating liquor and/or a controlled substance, with an unlawful BAC, or while visibly impaired by the consumption of liquor and/or a controlled substance, and thereby causing the death or serious impairment of a body function of another person.

Senate Bills 625 (S-1), 626 (S-1), 627 S-1), 870 (S-1), and 953 (S-1)

OUIL, OWI, Child Endangerment Penalties

Child Endangerment. The bills would make it a misdemeanor for a person to commit or attempt to commit a drunk driving offense while another person who was under 16 years old was occupying the vehicle. (The drunk driving offenses would include OUIL, OWI, OUIL or OWI causing death or serious impairment of a body function, or, if the person were under 21, operating with any BAC.) The misdemeanor would be punishable by imprisonment for up to one year or a maximum fine of \$1,000, or both.

A person could be charged with, convicted of, or punished for a drunk driving offense that was committed by the person while violating these child endangerment provisions, but points could not be assessed for both violations.

The bills also would include child endangerment in the Code's provisions that imply consent to chemical tests of a driver's blood, breath, or urine for the purpose of determining alcohol content or presence. In addition, an offender would receive six points on his or her driving record.

Child Support. If a person were convicted of OUIL or OWI causing death, the court could order the person to pay child support to the parent or guardian of the minor child of any person who died as a result of the violation. If a person were convicted of OUIL or OWI causing a serious impairment of a body function, the court could order the person to pay child support to the parent or guardian of the minor child of anyone who suffered a long-term incapacitating injury as a result of the violation. The court would have to determine the amount of child support by applying the child support formula developed under the Friend of the Court Act, considering the convicted defendant as if he or she were a parent of the child.

Restricted Plates, Immobilization, Forfeiture. If a person were convicted of OUIL, OWI, OUIL or OWI causing death or the serious impairment of a body function, or child endangerment, and the violation occurred within seven years of a prior conviction, the court would have to order restricted registration plates or vehicle immobilization.

If a person were convicted of OUIL or OWI causing death or serious impairment and the violation occurred within 10 years of two or more prior convictions, the sentence would have to require vehicle forfeiture.

Operating While Impaired. Currently, if an OWI violation occurs within 10 years of two or more prior convictions, the person is subject to a fine of at least \$200 but not more than \$1,000 and either to community service for 10 to 90 days plus imprisonment for up to one year, or to imprisonment for up to one year plus community service for up to 90 days. Under the bills, the person would be guilty of a felony punishable by a fine of at least \$500 but not more than \$5,000 and either imprisonment for at least one year but not more than five years, or probation with imprisonment for at least 30 days but not more than one year. If probation with imprisonment were imposed, at least 48 hours of the imprisonment would have to be served consecutively.

Operation by a Minor. The Code makes it a misdemeanor for a person under 21 to operate a vehicle with "any bodily alcohol content" (an alcohol

content of not less than 0.02 gram or more than 0.07 gram per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine; or any presence of alcohol within a person's body resulting from the consumption of intoxicating liquor, except as part of a generally recognized religious service or ceremony). The person is subject to community service for up to 60 days or a fine of up to \$500 if the violation occurs within seven years of one or more prior convictions. Under the bills, the person could be sentenced to community service, a fine, and/or imprisonment for up to 93 days.

"Prior Conviction". The bills would define "prior conviction" as a conviction for any of the following violations or an attempt to commit any of them, whether under a law of this State, a local ordinance substantially corresponding to a law of this State, or a substantially corresponding law of another state:

- OUIL, OWI, OUIL or OWI causing death or serious impairment, child endangerment, or commercial vehicle drunk driving (with a BAC of 0.04 to 0.07 gram of alcohol per 100 milliliters of blood, 210 liters of breath, or 67 milliliters of urine).
- Negligent homicide, manslaughter, or murder resulting from the operation of a vehicle.
- A minor's operation of a vehicle with any BAC, for purposes of that offense only.

Vehicle Sanctions

Confiscation/Temporary Plate. Under the Code, a peace officer may arrest a person who was operating a vehicle involved in an accident, or who is found in the driver's seat of a parked vehicle that intrudes on the roadway, if the officer has reasonable cause to believe that the person was operating the vehicle while under the influence or impaired, or if the person is under 21 and has any BAC. A peace officer also may arrest a person based upon the results of a preliminary chemical breath analysis.

The bills provide that if a person were arrested under these provisions and had previously been convicted of or received a juvenile disposition for a drunk driving violation or attempted violation within the past seven years (whether under a law of this State, a substantially corresponding local ordinance, or a substantially corresponding law of another state), the arresting officer immediately would have to confiscate the vehicle's registration plate. Subject to the exceptions described below,

confiscation also would be required when a peace officer detained a driver for a moving violation and determined that he or she was operating a vehicle with a suspended, revoked, or denied license, or a license that had been expired for 60 days or more, or without ever having applied for a license.

The officer would have to issue a temporary registration plate for the vehicle in a form prescribed by the Secretary of State, and place the temporary plate on the vehicle as required by the Secretary of State. The officer also would have to notify the Secretary of State through the Law Enforcement Information Network that the registration plate was confiscated and destroyed and that a temporary plate was issued.

A temporary plate would be valid for 90 days if the case were not prosecuted. The prosecuting attorney would have to notify the Secretary of State if a case referred to the prosecutor were not prosecuted. The arresting law enforcement agency would have to notify the Secretary of State if a case were not referred to the prosecuting attorney. If the case were prosecuted, the temporary plate would be valid until five days after the criminal charges against the person were dismissed, the person pleaded guilty or no contest to or was found guilty of or acquitted of the charges, or the person's vehicle registration was ordered canceled by the court, whichever occurred first.

The drunk driving violations to which these provisions would apply are the following:

- OUIL, OWI, or operating a commercial motor vehicle while intoxicated, or a substantially corresponding local ordinance.
- OUIL or OWI causing death or serious impairment of a body function.
- Child endangerment.
- Negligent homicide, manslaughter, or murder resulting from the operation of a vehicle or an attempt to commit one of those crimes.

Restricted Plate/Immobilization/Forfeiture. Subject to the exceptions described below, if a person were detained for driving without a license, the officer would have to issue the person a written notice to appear in court containing a warning that a failure to appear could result in a restricted registration plate, a vehicle immobilization, or a vehicle forfeiture. The notice also would have to include a warning that the person had just received a citation for driving without a valid license, and if he or she

drove the vehicle away from that location, a law enforcement officer could issue the person another citation for driving without a license, and, therefore, it was recommended that only a licensed driver operate the vehicle.

Regardless of whether the person appeared in court in response to the notice to appear, if the court found that the person was operating a vehicle while his or her license was suspended, revoked, or denied, or expired for 60 days or more, or without ever having applied for a license, the court would have to enter an order as described below, and the order could not be suspended.

For one prior suspension, revocation, or denial, or any combination of two prior suspensions, revocations, or denials (for driving with a suspended or revoked license, with an indefinitely suspended license, or after a license application had been denied) within the past seven years, the court would have to order one of the following:

- That the Secretary of State issue a restricted vehicle registration plate for one or more vehicles owned or leased in whole or in part or subsequently purchased or leased by the person.
- That one or more vehicles owned or leased by the defendant be immobilized.
- That the operation of one or more vehicles owned or leased or subsequently purchased or leased by the defendant be restricted from his or her operation by the use of any available technology in a manner that prohibited the defendant from operating the vehicles.

For any combination of three prior suspensions, revocations, or denials within the past seven years, the court would have to order forfeiture of the vehicle operated by the defendant and owned or leased in whole or in part by the defendant.

The defendant would have to provide the court with the vehicle identification number of all vehicles owned or leased in whole or in part by him or her, and the name, address, and any other information the court required for each owner, lessee, or lessor, of all vehicles owned or leased entirely or partly by the defendant.

The court could not order a restricted registration plate or vehicle immobilization if the defendant were not an owner or lessee of the vehicle operated during the violation and the owner or lessee did not knowingly allow the person to

commit the violation or have reason to know he or she would commit it.

Exceptions. These provisions for temporary plates, restricted registration plates, immobilization, and forfeiture for driving without a license would not apply to any of the following:

- A suspension, revocation, or denial based on a violation of the Support and Parenting Time Enforcement Act.
- An individual who had no currently effective suspension or denial for failure to answer or appear, or who had one such suspension or denial but had never violated a condition of it, and who had no other suspensions, revocations, or denials under the Code.
- A vehicle that was registered in another state or that was a rental vehicle.

The vehicle sanction provisions also would not apply to any of the following violations or to a violation of a substantially corresponding local ordinance:

- A violation of Chapter II (which includes registration and certification requirements).
- A violation of Chapter V (which contains vehicle insurance requirements).
- Failure to change address.
- A bad check violation.
- An equipment violation.
- A pedestrian, passenger, or bicycle violation other than a violation of the Michigan Liquor Control Act involving the purchase, consumption, or possession of alcohol by a person under 21, furnishing fraudulent ID to a person under 21, or the use of fraudulent ID by a person under 21 to purchase alcohol.

License Suspension

Current Law. The Secretary of State is required to suspend a person's license for at least 90 days but not more than two years for: fraudulently altering or forging documents pertaining to motor vehicles; committing perjury or making a false certification to the Secretary of State under any law requiring the registration of a motor vehicle or regulating the operation of a motor vehicle; driving away a vehicle without authority; using a vehicle without permission but without the intent to steal; felonious driving; reckless driving; failing to stop and disclose identity at the scene of an accident resulting in death or serious injury; or committing a felony in which a motor vehicle was used.

For OUIL, a suspension of at least six months but not more than two years is required if the person has no prior convictions within seven years, and a restricted license may not be issued for the first 30 days of the suspension; a six-month to two-year suspension is required if the person has one prior OWI conviction within seven years, and a restricted license may not be issued for the first 60 days of the suspension; and the license must be revoked if the person has one or more prior OUIL convictions within seven years, or two or more OUIL or OWI convictions within 10 years. For OWI, a suspension of at least 90 days but not more than one year is required if the person has no prior convictions; a six-month to two-year suspension is required, and a restricted license may not be issued during the first 60 days, if the person has one prior OUIL or OWI conviction within seven years; and revocation is required if the person has two or more prior convictions within 10 years. For a person under 21 who is convicted of driving with any bodily alcohol content, a suspension of at least 30 but not more than 90 days is required if the person has no prior convictions; and a 90-day to one-year suspension is required, and a restricted license may not be issued, if the person has one or more prior convictions for OUIL, OWI, or operating under 21 with any BAC. A person's license must be revoked for an OUIL or OWI offense that resulted in death or serious impairment.

For third- or fourth-degree fleeing and eluding (failing to stop at the signal of a police or conservation officer), the court must order the Secretary of State to suspend the person's license for one year, and the person may not receive a restricted license for the first six months of the suspension. For first- or second-degree fleeing and eluding, the person's license must be revoked.

Ninety-Day Suspension. Under the bills, the Secretary of State would have to suspend a person's license for 90 days for any of the following: failing to stop and disclose identity at the scene of an accident resulting in injury; reckless driving; malicious destruction resulting from the operation of a vehicle; stealing motor vehicle fuel by pumping it into a vehicle; furnishing fraudulent identification to a person under 21; or the use of fraudulent ID by a person under 21 to purchase alcohol.

One-Year Suspension. The Secretary of State would have to suspend a person's license for one year for the following: fraudulently altering or forging documents; committing perjury or making a false certification; driving away a vehicle without

permission; felonious driving; failing to stop and disclose identity at the scene of an accident resulting in death or serious injury; committing a felony in which a motor vehicle was used; or third- or fourth-degree fleeing and eluding. In regard to fleeing and eluding, the Secretary of State could issue a restricted license for all or part of the suspension, except during the first 180 days. If the person served a term of imprisonment as part of his or her sentence, the suspension period would have to begin after the prison term was completed.

Specific Offenses. For perjury or making a false certification to the Secretary of State under any law requiring motor vehicle registration or regulating the operation of a vehicle; the Secretary of State would have to suspend the person's license for 90 days if he or she had no prior convictions, or for one year if the person had one or more prior convictions for that offense.

For using a vehicle without permission but without the intent to steal, the Secretary of State would have to suspend the person's license for 90 days if he or she had no prior convictions, or for one year if the person had one or more prior convictions for that offense within seven years.

If a person operated a vehicle with an open container of alcohol in the passenger compartment, or if a person under 21 knowingly transported or possessed alcohol in a vehicle, the Secretary of State would have to suspend the person's license for 90 days if he or she had one prior conviction for that offense, and could issue a restricted license after the first 30 days of suspension. The suspension would have to be for 180 days if the person had two or more prior convictions for the offense, and a restricted license could be issued after the first 60 days. (Currently, the Code requires a suspension of at least 90 but not more than 180 days for one prior conviction, or for 180 days to one year for two or more prior convictions. A restricted license may be issued after the first 30 or 60 days, respectively.)

For an OUIL offense, the Secretary of State would have to suspend the person's license for 180 days if he or she had no prior convictions within seven years, and could issue a restricted license for all or part of the suspension except during the first 30 days.

For an OWI offense, the Secretary of State would have to suspend the license for 90 days if the person had no prior convictions within seven years, although a six-month suspension would be required

if the person were convicted of operating a vehicle when, due to the consumption of alcohol and/or a controlled substance, the person's ability to operate was visibly impaired. A restricted license could be issued for all or part of the suspension.

If a person under 21 were convicted of driving with any BAC, the bills would require a 30-day suspension if he or she had no prior convictions within seven years. A 90-day suspension would be required if the person had one or more prior convictions within seven years. A restricted license could be issued for all or part of the suspension.

Vehicle Group Designation Suspension. The Code requires the Secretary of State to suspend or revoke a person's vehicle group designations for offenses committed while the person was driving a commercial motor vehicle. A one-year suspension is required if the person is convicted of OUIL, OWI, OUIL or OWI causing death or serious impairment, or commercial vehicle drunk driving (as well as for other specified offenses). Under the bills, a revocation of at least 10 years would be required for the following:

- OUIL or OWI causing death or serious impairment while driving a commercial vehicle.
- Negligent homicide, manslaughter, or murder resulting from the operation of a commercial vehicle.
- Two or more convictions of any combination of the following while driving a commercial vehicle: OUIL, OWI, OUIL or OWI causing death or serious impairment, child endangerment, or commercial vehicle drunk driving; or negligent homicide, manslaughter, or murder.
- Commercial vehicle drunk driving within 10 years of two or more prior convictions.

Restricted Plates

If ordered by the court, the Secretary of State could issue a restricted registration plate for a vehicle after the applicant paid the Secretary of State a \$125 service fee, in addition to any other applicable registration fees required under the Code. The restricted plate would have to be of a material and design specified by the Secretary of State, displayed in a manner specified by the Secretary of State, and provided by the Secretary of State. The Secretary of State would have to consult with the Department of State Police to ensure that the material, design, and display did not compromise the ability of law enforcement agencies to identify specific vehicles accurately. The service fee would have to be deposited in the General Fund and used first to defray the Secretary of State's expense in administering the restricted registration plate, immobilization, and forfeiture programs.

The court could not order, and the Secretary of State could not issue, a restricted plate for a vehicle unless each owner or lessor of the vehicle signed a written statement acknowledging that it would be subject to immobilization or forfeiture for any violation (drunk driving or driving without a license, as specified above) that was committed by the person who operated the vehicle during the violation for which the restricted plate was issued.

The Secretary of State would have to issue, without a fee, a temporary permit to a person who had submitted an application and the proper fees for a restricted plate. The restricted registration would be valid for up to 60 days after the date of issuance.

A restricted plate would have to be assigned to a vehicle for all of the suspension, revocation, or denial period remaining when the person committed the driving-without-a-license violation as shown on his or her master driving record, in addition to the period of the suspension, revocation, or denial imposed for that violation.

If the expiration date of the registration plate replaced by the restricted plate were within the period that the restricted plate was assigned to the vehicle, the restricted plate would expire on the expiration date but could be renewed, as provided in the Code. If the restricted plate expired before the expiration date, an application for a duplicate regular registration plate for the remainder of the regular period could be made. The Secretary of State could not issue a new registration plate for a

vehicle during the period for which a restricted plate was assigned to the vehicle.

The owner of a vehicle could not operate a vehicle upon which a restricted plate was ordered to be placed or allow another person to operate that vehicle, unless he or she knew or had reason to know that the restricted plate was properly placed on the vehicle. If a vehicle owner knew or had reason to know that someone was prohibited by the issuance of a restricted plate from operating that vehicle, the owner could not allow that person to operate it.

A person who violated these prohibitions would be guilty of a misdemeanor punishable by imprisonment for up to one year and/or a fine of up to \$1,000.

Immobilization

A court would have to order a vehicle immobilized under the bills by the installation of a device that locked the ignition, wheels, or steering of the vehicle in a manner that prohibited any person from operating it. If a vehicle were immobilized, the court could order it stored at a location and in a manner considered appropriate by the court, and could order the violator to pay the cost of immobilization and storage.

A vehicle would have to be immobilized for all of the suspension, revocation, or denial period that remained of the suspension, revocation, or denial period that the person violated when driving without a license, as shown on his or her master driving record, in addition to the period of the suspension, revocation, or denial period imposed for that violation.

A person could not remove or bypass or attempt to remove or bypass a device that he or she knew or had reason to know had been installed on a vehicle by court order to immobilize the vehicle. A violation of this provision would be a misdemeanor punishable by imprisonment for up to one year and/or a maximum fine of \$1,000.

Forfeiture Requirement/Notice

The Code provides that, in addition to any other penalty for OUIL, a repeat OWI violation, or OUIL or OWI causing death or serious impairment, the sentence may require forfeiture of a vehicle owned in whole or in part by the defendant, or return of the vehicle to the lessor if the defendant leases it.

Under the bills, the court would be required to order either forfeiture or return of the vehicle.

Currently, within three days after a defendant's conviction for a one of these drunk driving violations, the court must notify the defendant, his or her attorney, and the prosecuting attorney if the court intends to impose forfeiture or return of the vehicle to the lessor. Within three days after receiving this notice, the prosecutor must give notice to all owners of the vehicle and anyone holding a security interest in it that the court may require forfeiture or return of the vehicle. The bills would extend the time limits for giving notice to seven days, and require that the notice to owners and persons holding a security interest state that forfeiture or return of the vehicle was required.

Currently, within 14 days after the prosecutor has given the required notice, an owner, lessee, or holder of a security interest may file a claim of interest in the vehicle. Within 21 days after the period for filing claims, but before sentencing, the court must hold a hearing to determine the legitimacy of any claim, the extent of any co-owner's equity interest, and the liability of the defendant to any co-lessee. Under the bills, if no claim were filed, the court would have to order the vehicle forfeited or returned to the lessor. If a claim were filed, the court would have to hold a hearing as currently required.

The Code provides that, if a vehicle is forfeited, the unit of government that seized it must sell the vehicle and dispose of the proceeds in the order of priority set forth in the Code. Under the bills, first priority would be given to paying the proper expenses of the proceedings for forfeiture and sale, including expenses during the seizure process and expenses for maintaining custody of the property, advertising, and court costs. Currently, this payment comes after paying an outstanding security interest, paying a co-owner's equity interest, satisfying an order of restitution, paying a victim's claim, and paying an outstanding lien imposed by a governmental unit.

The Code makes it a felony, punishable by imprisonment for up to four years and/or a fine of up to \$2,000, for a person knowingly to conceal, sell, give away, or otherwise transfer or dispose of a vehicle with the intent to avoid forfeiture or return of the vehicle. The bills would make this a misdemeanor punishable by up to one year in prison and/or a maximum fine of \$1,000.

The bills specify that the failure of the court or prosecutor to comply with any time limit specified in this section of the Code would not preclude the court from ordering forfeiture or return of a vehicle, unless the court found that the owner or claimant suffered substantial prejudice as a result of the failure. The bills also state that the forfeiture section would not preclude the prosecutor from pursuing a forfeiture proceeding under any other law of this State or a substantially corresponding local ordinance.

Refusal to Conduct Transactions

If the Secretary of State received three or more conviction abstracts indicating that a person had on separate occasions within the past seven years continued to operate any motor vehicle without a license, the Secretary of State could give the person written notice that the Secretary could deny or refuse to conduct any transaction in that person's name that required a monetary payment under the Code or the Natural Resources and Environmental Protection Act, until the suspension, revocation, or denial terminated and the person paid a \$25 service fee, or a court ordered otherwise. The service fee would have to be deposited in the General Fund and used first to defray the Secretary of State's expense in administering these provisions.

These provisions would not apply to the same violations that would be exempt from the vehicle sanctions described above.

Driving without a License

The Code prohibits a person from operating a vehicle if his or her license or registration certificate has been suspended or revoked, if his or her application for a license has been denied, or if he or she has never applied for a license. The bills also would prohibit a person from operating a vehicle if his or her license had been expired for 60 days or more.

The bills would require the Secretary of State immediately to impose an additional 30-day period of suspension or denial upon receiving a record of a person's conviction or civil infraction determination for the unlawful operation of a vehicle or a moving violation while his or her license was indefinitely suspended or if his or her application for a license had been denied.

Immediately upon accepting a guilty or no contest plea or upon entry of a guilty verdict for a driving-

without-a-license violation, whether or not the person was eligible to be sanctioned as a multiple offender, the court would have to consider all prior convictions within the past seven years currently entered upon the person's Michigan driving record (except convictions the court determined upon the defendant's motion to be constitutionally invalid), and in addition to any penalty imposed for the violation, the court could impose permitted sanctions and would have to impose required sanctions (pertaining to restricted plates, vehicle immobilization, restricted operation, or forfeiture).

The bills specify that the section of the Code concerning driving without a license would not apply to a person did not have more than one currently effective suspension or denial for failure to appear or answer, had never violated that suspension or denial, and had no other currently effective suspensions, revocations, or denials under the Code.

The bills specify that "never applied for a license" would include a person who applied for a license, was denied, and never applied again.

Other Provisions

Prohibited Vehicle Transfer. The bills would prohibit a person from transferring or attempting to transfer ownership in or possession of a vehicle issued a temporary or restricted registration plate, or subject to immobilization or ordered immobilized, with the intent to avoid the issuance of a restricted plate for that vehicle or immobilization of it. A person also could not purchase or lease a vehicle or an interest in one with the intent to circumvent the restrictions created by the issuance of a restricted plate or by immobilization.

While a vehicle was subject to a temporary registration plate, restricted registration plate, or immobilization, a person could not without a court order transfer or assign the title or an interest in the vehicle to a person who was not subject to payment of a use tax under the Use Tax Act.

A violation of these provisions would be a misdemeanor punishable by imprisonment for up to one year and/or a maximum fine of \$1,000.

Time Limits. The Code contains time limits for arraignments, pretrial conferences, and final adjudications in drunk driving cases, but specifies that these time limits do not apply to an OUIL violation punishable as a felony or OUIL, OWI, operation by a minor, or commercial vehicle drunk

driving joined with a felony charge. Under the bills, the time limits would not apply to an OUIL, OWI, or commercial vehicle drunk driving violation punishable as a felony, or to OUIL, OWI, operation by a minor, child endangerment, or commercial vehicle drunk driving joined with a felony charge.

Commercial Vehicle Drunk Driving. A person who committed commercial vehicle drunk driving within 10 years of two or more prior convictions would be guilty of a felony and would have to be sentenced to pay a fine of at least \$500 but not more than \$5,000 and to either of the following:

- Imprisonment for at least one year but not more than five years.
- Probation with imprisonment for at least 30 days but not more than one year, including at least 48 hours' imprisonment served consecutively.

A prison term imposed under these provisions could not be suspended.

Reinstatement Fee. The Code requires a person to pay a \$25 driver license reinstatement fee under certain circumstances, including a license suspension. A court must transmit 60% of the fee to the Secretary of State on a monthly basis, and the funds are to be deposited in the General Fund and used to defray the expenses of the Secretary of State in processing the suspension and reinstatement of driver's licenses. Under the bills, a court would have to transmit \$6, instead of 60%, of each fee to the Secretary of State.

State Police Report. The Code requires the Department of State Police to prepare an annual report, the Michigan Annual Drunk Driving Audit, and include in it specific information from the preceding calendar year. Under the bills, the report also would have to include the number of arrests made for child endangerment, the number of vehicles immobilized, the number of restricted registration plates issued, and the number of vehicles forfeited.

Court Records. The Code requires each municipal judge and court clerk to keep a record of every case in which a person is charged with or cited for a violation of the Code or a substantially corresponding local ordinance regulating the operation of vehicles on highways, and to forward an abstract of the record to the Secretary of State. Under the bills, in addition to the currently required information, an abstract or report would have to include the vehicle identification number of all

vehicles whose operation was restricted, assigned a restricted registration plate, immobilized, or forfeited, and of all vehicles owned or leased by the person charged or cited.

Application. The bills would require an application for a vehicle registration and a certificate of title to include the driver's license number or State personal identification number of all owners or lessees, and the Federal identification number of a firm, association, or corporation.

If an application were for registration of a vehicle for which a restricted plate was issued, the owner or lessor of the vehicle would have to sign a statement acknowledging that it could be subject to immobilization or forfeiture for a violation committed by the person who operated the vehicle during the violation for which the restricted plate was issued. If a restricted plate would have been issued but for the applicant's innocence, each owner or lessor would have to sign an acknowledgment that a vehicle of the owner or lessor could be subject to immobilization or forfeiture for a violation committed by the person who operated the vehicle during the violation that subjected it to a restricted plate, if that person operated any vehicle of the applicant without possessing an appropriate valid driver's license.

Senate Bill 989 (S-1)

The bill would amend the Michigan Liquor Control Act to delete current driver's license sanctions for certain offenses, and instead require the Secretary of State to suspend the driver's license of a convicted individual as provided in Section 319 of the Michigan Vehicle Code (which Senate Bill 627 (S-1) would amend). The offenses in question prohibit a person under 21 from purchasing, consuming, or possessing, or attempting to purchase, consume, or possess alcoholic liquor, or using fraudulent identification to purchase liquor, and prohibit a person from furnishing fraudulent ID to an individual under 21.

Senate Bill 990 (S-1)

The bill would amend the Michigan Penal Code to delete driver's license suspension requirements for certain offenses, and instead require suspension as provided in Section 319 of the Michigan Vehicle Code. These offenses prohibit stealing motor vehicle fuel by pumping it into a motor vehicle; damaging or destroying another person's tree, grass, plant, or soil with a vehicle; or fleeing and eluding.

The Penal Code also requires license revocation for first- or second-degree fleeing and eluding. The bill would require revocation as provided in Section 303 of the Michigan Vehicle Code (which Senate Bill 953 (S-1) would amend).

Senate Bill 991 (S-1)

The bill would amend Public Act 214 of 1931, which defines the offense of felonious driving, to delete the current driver's license suspension requirement, and instead require the Secretary of State to suspend the license of a person convicted under the Act as provided in Section 319 of the Michigan Vehicle Code. Currently, the Secretary of State must suspend the license of a convicted person upon the recommendation of the court imposing sentence.

MCL 324.81134 (S.B. 268)
Proposed MCL 769.1f (S.B. 269)
MCL 750.316 et al. (S.B. 271)
257.217 et al. (S.B. 625)
257.321a et al. (S.B. 626)
257.5a et al. (S.B. 627)
257.310d et al. (S.B. 870)
257.303 et al. (S.B. 953)
436.33b (S.B. 989)
750.367c et al. (S.B. 990)
752.192 (S.B. 991)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

This package of bills would address the problem posed by a small number of individuals who continue to drive while their licenses are suspended or revoked, and who continue to drive while intoxicated. The offenses of drunk driving and driving without a license are clearly related in the context of repeat offenders. Under the bills, those who have proven themselves unable or unwilling to reform would be subject to a series of sanctions ranging from the issuance of temporary plates to the forfeiture of the vehicle. When a police officer seized vehicle plates and issued temporary plates, drivers would see an immediate consequence of their actions. A vehicle then could be immobilized or its operation by the offender could be restricted. Drivers also would be subject to an additional 30-day suspension for driving while a license was suspended or denied. Forfeiture would be required

only for the most dangerous and incorrigible offenders.

The bills' range of sanctions would mitigate the potential hardship on a driver's family, since a vehicle could still be driven with restricted plates or if it were equipped with a device that prevented only the offender from driving the vehicle. Also, a court could not order restricted plates or immobilization if the defendant did not own or lease the vehicle during the violation and the owner or lessee did not knowingly allow the person to commit the violation. In addition, a restricted plate could not be issued, and a vehicle with a restricted plate could not be registered, unless the owner or lessor signed an acknowledgment that the vehicle could be subject to immobilization or forfeiture.

In addition, the bills would combat drunk driving by making child endangerment a separate offense; allowing courts to order offenders to pay child support if a parent died or suffered a long-term incapacitating injury; increasing sanctions for commercial drunk driving; incorporating a standard definition of "prior conviction" for purposes of sentence enhancement; including in that definition negligent homicide, manslaughter, or murder resulting from the operation of a vehicle; and allowing the Secretary of State to refuse to conduct transactions for someone who repeatedly drove without a license.

Supporting Argument

Local units of government should be reimbursed for their expenses in responding to drunk driving incidents and processing vehicle forfeitures. Under the bills, the proceeds of a forfeited vehicle would be used first to pay the expenses of the forfeiture and sale. Local units also could receive reimbursement from convicted drunk drivers for medical and personnel expenses of responding to an emergency.

Opposing Argument

The current law gives judges the ability to take away a vehicle when forfeiture is appropriate, after considering the individual circumstances of a case. In some situations, a judge might intend to order forfeiture but realize during the course of a hearing that it would be unduly punitive. Forfeiture should remain at the discretion of the court.

Legislative Analyst: S. Lowe

FISCAL IMPACT

Senate Bill 268 (S-1)

The bill would result in indeterminate costs and/or revenue for State government. There appears to be no direct fiscal impact on local government.

There are no data currently available that would indicate how many people might be convicted of serious impairment of a body function while operating an ORV in violation of subsection (1) or (2) of MCL 324.81134. As the prescribed punishment would be five years in prison or a fine, or both, the State could incur costs for incarceration and/or receive additional fee revenue for the public library fund. Under current punishment practices, an offender serves about 88% of a minimum sentence. Assuming that an offender would receive a minimum sentence that was two-thirds of the maximum, on average, incarceration could cost \$59,400.

Senate Bill 269 (S-1)

The bill would result in an indeterminate revenue increase to the State and local units of government. In 1996, there were approximately 49,500 arrests made in Michigan for driving under the influence of alcohol or drugs. In past years, about half of these involved accidents that required emergency response. The percentage breakdown of Michigan State Police involvement and local involvement is not known. If the State were involved in 15% of these accidents and the average accident and arrest required three hours (including time from initial contact, arrest, breath testing, and processing), the potential State revenue could be: 3,700 annual accidents x \$150/accident = \$555,000. The revenue impact on local units would vary depending on the type of emergency unit sent, local costs, and the number of accidents per year.

State courts would face minimal administrative costs under this bill as it relates to the collection and distribution of funds.

Senate Bill 271 (S-1)

The bill would have an indeterminate impact. In 1996 there were 64 circuit court felony convictions under MCL 257.625(4) (drunk driving causing death). The number that will occur and the number of the victims who will have minor children are not determinable. The level of support required under the child support formula is based on a joint income model and other financial variables. Therefore, an average payment cannot be estimated.

Senate Bills 625 (S-1), 626 (S-1) & 627 (S-1)

Senate Bills 625 (S-1), 626 (S-1), and 627 (S-1) would have indeterminate fiscal impacts on State and local government.

There are no data currently available that would indicate how many people might be convicted of the felonies or misdemeanors included in these Senate bills. State and local government could incur costs for incarceration and/or receive additional fine revenue under the proposed legislation.

The provisions would impose substantial increases in administrative costs to the Department of State. To defray its costs, the State would impose a \$125 registration fee for the restricted registration plates. Of the approximately 7,000,000 licensed drivers, 370,000 had their licenses suspended or revoked in 1997. Since there are no data currently available to indicate how many additional people would qualify for these restricted registration plates, the fiscal impact is indeterminate.

Senate Bill 870 (S-1)

The bill would have an indeterminate fiscal impact on State and local government. There are no data currently available that would indicate how many people might be convicted of the crimes created in this bill. However, State and local government could incur costs for incarceration and/or receive additional fee revenue based on the penalties prescribed in the proposed legislation.

There would be minimal administrative costs imposed on the Secretary of State with its additional record-keeping requirements. Since, however, there are no data currently available that would indicate how many people might be convicted of the proposed child endangerment misdemeanor, the fiscal impact is indeterminate.

Senate Bill 953 (S-1)

The bill would have an indeterminate fiscal impact on State and local government.

To the extent that the proposed legislation would not add or increase the penalty for a felony or misdemeanor, the cost of incarceration and/or the receipt of fine revenue would be unchanged. To the extent that this bill is tie-barred to other legislation that would include additional and increased penalties, the legislation would indirectly

increase costs and/or revenues for State and local government.

Further, the Department of State would incur additional administrative costs and technical computer programming costs due to a provision requiring issuance of temporary plates. Of the approximately 7,000,000 licensed drivers, 370,000 drivers had their licenses suspended or revoked in 1997. Currently, there are no data available that indicate how many more people would fall under the purview of the increased penalties of the tie-barred bills or how many would receive temporary plates due to drunk driving convictions.

Senate Bills 989 (S-1), 990 (S-1), & 991 (S-1)

Currently, there are no data available that indicate how many more people would fall under the purview of the new provisions in the tie-barred bills. The Department of State would incur additional administrative costs and technical programming expenses due to increased costs for administering these provisions. However, the fiscal impact on State and local government is indeterminate.

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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.