



Senate Bill 268 (as enrolled)
Senate Bill 269 (as enrolled)
Senate Bill 625 (as enrolled)
Senate Bill 627 (as enrolled)
Senate Bill 869 (as enrolled)
Senate Bill 870 (as enrolled)
Senate Bill 953 (as enrolled)
House Bill 4210 (as enrolled)
House Bill 4576 (as enrolled)
House Bill 4959 (as enrolled)
House Bill 4960 (as enrolled)
House Bill 4961 (as enrolled)
House Bill 5122 (as enrolled)
House Bill 5123 (as enrolled)
House Bill 5951 (as enrolled)

House Bills 5952 & 5953 (as enrolled)

House Bills 5954-5956 (as enrolled)

Sponsor: Senator Bill Bullard (S.B. 268)
Senator Michael J. Bouchard (S.B. 269)
Senator Loren Bennett (S.B. 625)
Senator Mike Rogers (S.B. 627)
Senator Diane Byrum (S.B. 869)
Senator Joel D. Gougeon (S.B. 870)
Senator William Van Regenmorter (S.B. 953)
Representative Howard Wetters (H.B. 4210)
Representative Michael Hanley (H.B. 4576)
Representative Frank Fitzgerald (H.B. 4959)

Senate Committee: Judiciary

House Committee: Judiciary (except House Bill 4210)
Transportation (House Bill 4210)

Date Completed: 1-12-99

RATIONALE

Michigan's drunk driving laws have undergone extensive revision in recent years. The latest changes to take effect were contained in Public Acts 490 and 491 of 1996, which became effective 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.

PUBLIC ACT 355 of 1998

PUBLIC ACT 345 of 1998

PUBLIC ACT 346 of 1998

PUBLIC ACT 347 of 1998

PUBLIC ACT 348 of 1998

PUBLIC ACT 350 of 1998

PUBLIC ACT 351 of 1998

PUBLIC ACT 340 of 1998

PUBLIC ACT 357 of 1998

PUBLIC ACT 349 of 1998

PUBLIC ACT 359 of 1998

PUBLIC ACT 358 of 1998

PUBLIC ACT 342 of 1998

PUBLIC ACT 341 of 1998

PUBLIC ACT 356 of 1998

PUBLIC ACTS 343 & 344 of 1998

PUBLIC ACTS 352-354 of 1998

Representative Charles Perricone (H.B. 4960)
Representative Patricia Godchaux (H.B. 4961)
Representative John Freeman (H.B. 5122)
Representative Penny Crissman (H.B. 5123)
Representative George Mans (H.B. 5951)
Representative Mark Schauer (H.B. 5952)
Representative Gloria Schermesser (H.B. 5953)
Representative Bob Brown (H.B. 5954)
Representative William Callahan (H.B. 5955)
Representative Rose Bogardus (H.B. 5956)

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. It was suggested, therefore, that 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, also were recommended.

CONTENT

All of the bills (except Senate Bills 268 and 269 and House Bills 5953, 5954, and 5955) amend the Michigan Vehicle Code to revise criminal penalties, license sanctions, and vehicle sanctions for drunk driving offenses, including operating a vehicle while under the influence of alcohol and/or a controlled substance, operating while impaired by alcohol and/or a controlled substance, and operating a commercial vehicle while intoxicated, as well as for driving without a license. The Vehicle Code bills do the following:

- Require the immobilization of a vehicle for drunk driving or driving without a license if the offender has prior convictions.
- Require the confiscation of a vehicle's license plate and the issuance of a temporary plate when the driver is detained for a violation subject to mandatory immobilization.
- Provide for the forfeiture of a vehicle if a person drives without a license and causes the death or serious impairment of a body function of another person, or if the vehicle owner knowingly permits it to be operated by someone without a license.
- Prohibit a person from committing a drunk driving offense while a child under 16 is in the vehicle (referred to below as "child endangerment").
- Revise the prescribed periods of license

suspension; authorize the Secretary of State to suspend licenses without a court order; and authorize the Secretary of State to issue restricted licenses.

- Limit a court's review of Secretary of State determinations.
- Impose an additional 30-day suspension in certain cases of driving without a license.
- Establish felony penalties for commercial vehicle drunk driving if the offender has prior convictions.
- Increase the penalty for allowing someone else to commit OUIL.
- Require the installation of an ignition interlock device as a condition of a restricted license in cases of multiple convictions for drunk driving or causing death by operation of a vehicle.
- Establish insurance, bond, and service requirements for manufacturers of ignition interlock devices.

Senate Bill 268 amends the Natural Resources and Environmental Protection Act to establish penalties for someone who causes the death or 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 amends 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 and expenses of prosecution.

House Bill 5953 amends the Michigan Penal Code to require the Secretary of State to impose a license suspension or revocation as provided in the Vehicle Code for offenses involving stealing motor vehicle fuel by pumping it into a vehicle; maliciously cutting, damaging, or destroying the grass, plants, crops, or soil of another person with a vehicle; or committing fleeing and eluding. (The Penal Code currently allows a one-year suspension for the first two offenses, requires a one-year suspension for third- or fourth-degree fleeing and eluding, and requires revocation for certain second-degree fleeing and eluding offenses.) The bill also covers convictions for attempted violations.

House Bill 5954 amends Public Act 214 of 1931, which prohibits felonious driving, to require that the Secretary of State suspend a person's

driver's license as provided in the Vehicle Code, instead of as recommended by the court, for a felonious driving violation. The bill also requires suspension for an attempted violation.

House Bill 5955 amends the Michigan Liquor Control Code to require the Secretary of State to suspend the driver's license of a minor who purchases or consumes, or attempts to purchase or consume, alcohol in violation of the Code, and for a minor who uses fraudulent ID, or a person who provides fraudulent ID to a minor, to purchase alcohol. The bill deletes provisions for court-ordered license sanctions for these offenses.

All of the bills will take effect October 1, 1999. The bills (other than House Bills 5953-5955) are described in more detail below.

Vehicle Code Amendments

Vehicle Immobilization & Temporary Plate

Immobilization. The bills allow a court to order immobilization for up to 180 days for OUIL, OWI, OUIL/OWI causing death or serious impairment of a body function, or child endangerment. For a second violation in any combination arising out of separate incidents, the court must order immobilization for at least 24 days but not more than 180 days. For a third or subsequent violation, the court must order immobilization for at least six months but not more than three years.

For a violation involving driving without a license, or permitting another person to drive without a license, the court may order immobilization for up to 180 days if the offender has one prior suspension, revocation, or denial within the past seven years. The court must order immobilization for at least 90 but not more than 180 days if the offender has any combination of three or more prior suspensions, revocations, or denials for this offense within the past seven years. For any combination of four or more prior suspensions, revocations, or denials within the past seven years, the court must order immobilization for at least one year but not more than three years.

A mandatory immobilization order may not be suspended. A court may not order immobilization if the defendant is not the owner or lessee of the vehicle operated during the violation, unless the owner or lessee knowingly permitted the vehicle to be operated by someone who was intoxicated or did not have a license, regardless of whether a conviction resulted.

These immobilization provisions do not apply to any of the following violations or a violation of a substantially corresponding local ordinance.

- A suspension, revocation, or denial based on a violation of the Support and Parenting Time Enforcement Act.
- For driving without a license, an individual who has no currently effective suspension or denial for failure to appear or to comply with a court order or has one such suspension or denial but has never violated a condition of it, and who has no other suspensions, revocations, or denials under the Vehicle Code.
- A vehicle registered in another state or a rental vehicle.
- A violation of Chapter II (registration and certification requirements), a violation of Chapter V (vehicle insurance requirements), a violation for failure to change address, a parking violation, a bad check violation, an equipment violation, or a pedestrian, passenger, or bicycle violation (other than certain violations of the Liquor Control Code).

A court must order a vehicle immobilized by the use of any available technology that locks the ignition, wheels, or steering of the vehicle, or otherwise prevents any person or the defendant from operating the vehicle. The court may order an immobilized vehicle stored at a location and in a manner considered appropriate by the court, and may order the convicted person to pay the cost of immobilization and storage.

The defendant must give to the court the vehicle identification number and registration plate number of the vehicle involved in the violation. A defendant who is prohibited from operating a motor vehicle by vehicle immobilization may not purchase, lease, or otherwise obtain a motor vehicle during the immobilization period.

A person may not remove, tamper with, or bypass, or attempt to remove, tamper with, or bypass, a device that he or she knows or has reason to know has been installed on a vehicle by court order for immobilization, and may not operate or attempt to operate a vehicle that he or she knows or has reason to know has been ordered immobilized.

A person who violates these prohibitions will be guilty of a misdemeanor punishable by imprisonment for up to 93 days and/or a fine of up to \$100.

To the extent that a local ordinance regarding the storage or removal of vehicles conflicts with a court order of immobilization, the ordinance will be preempted.

Temporary Plate. The bills provide that, when a peace officer detains the driver of a vehicle for a violation of a State law or local ordinance for which vehicle immobilization is required, the officer must do the following:

- Immediately confiscate and destroy the vehicle's registration plate.
- Issue a temporary plate for the vehicle in the same form prescribed by the Secretary of State for temporary plates issued to vehicle dealers.
- Place the temporary plate on the vehicle as required by the Secretary of State.
- Notify the Secretary of State through the Law Enforcement Information Network that the registration plate was confiscated and destroyed, and a temporary plate was issued.

A temporary plate will be valid for 100 days unless extended by the court.

Vehicle Forfeiture

Currently, a vehicle may be ordered forfeited or returned to its lessor as part of a sentence for OUIL, OWI with prior convictions, or OUIL/OWI causing death or serious impairment of a body function. Under the bills, a vehicle also may be forfeited or returned for child endangerment or a violation of driving without a license if the offender

caused the death or serious impairment of another person (as described below).

Currently, within three days after the defendant's conviction, the court must notify the defendant, his or her attorney, and the prosecuting attorney if the court intends to consider imposing a forfeiture sanction. Within three days after this notice, the prosecutor must notify all owners of the vehicle and any person holding a security interest in it that the court may require forfeiture or return of the vehicle. The bills provide, instead, that within 14 days after the defendant's conviction, the prosecuting attorney may file a petition with the court for the forfeiture or return of the vehicle. The prosecutor must give notice by first-class mail or other process to the defendant and his or her attorney, all owners of the vehicle, and any person holding a security interest in it, that the court may require forfeiture or return of the vehicle.

Under the Code, if a vehicle is seized before disposition of the criminal proceedings, a defendant who owns or leases the vehicle may move the court to require the seizing agency to file a lien against the vehicle and return it to the owner or lessee pending disposition of the criminal proceedings. The court may order the vehicle returned if the defendant establishes that he or she holds the legal title to the vehicle or has a leasehold interest, and that it is necessary for him or her or a member of his or her family to use the vehicle pending the outcome of the forfeiture action. If the court orders the vehicle returned, the court must order the seizing agency to file a lien against it. Under the bills, the court also must order the defendant to post a bond in an amount equal to the vehicle's retail value.

Currently, within 14 days after the prosecutor gives notice, an owner, lessee, or holder of a security interest may file a claim of interest in the vehicle. The court must determine the legitimacy of any claim, the extent of any co-owner's equity interest, and the defendant's liability to any co-lessee. Under the bills, the defendant also may file a claim of interest. The bills require the court, in considering whether to order forfeiture, to review the defendant's driving record to determine whether he or she has multiple drunk driving convictions and/or multiple suspensions, restrictions, or denials for driving without a license. If the defendant has multiple convictions or suspensions, restrictions, or denials, or both, that factor must weigh heavily in favor of forfeiture.

Presently, a person who knowingly conceals, sells, gives away, or otherwise transfers or disposes of a

vehicle with the intent to avoid forfeiture or return of the vehicle, is guilty of a felony punishable by imprisonment for up to four years and/or a fine of up to \$2,000. The bills change the offense to a misdemeanor punishable by imprisonment for up to one year and/or a maximum fine of \$1,000.

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

Driving without a License

The Code makes it a misdemeanor for a person whose driver's license or registration certificate has been suspended or revoked, whose application for a license has been denied, or who has never applied for a license, to operate a motor vehicle upon a highway or other place open to the general public or generally accessible to motor vehicles. Under the bills, if a person violates this provision and causes the death of another person, the violator will be guilty of a felony punishable by imprisonment for up to 15 years and/or a fine of at least \$2,500 but not more than \$10,000. If the violator causes the serious impairment of a body function of another person, the offense is a felony punishable by imprisonment for up to five years and/or a fine of at least \$1,000 but not more than \$5,000. (These penalties do not apply to a person whose driver's license was suspended because he or she failed to answer a citation or failed to comply with an order or judgment for a civil infraction.) "Serious impairment of a body function" includes, but not is limited to, one or more of the following:

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

In addition to the criminal penalty, a vehicle may be forfeited or immobilized as provided in the bills. If

the violation occurs within seven years of a prior conviction or within 10 years of two or more prior convictions, the court must order immobilization.

The Code also makes it a misdemeanor for a person knowingly to permit his or her vehicle to be operated by a person whose license or registration is suspended or revoked, whose license application has been denied, or who has never applied for a license. Under the bills, if the driver causes the serious impairment of a body function of another person, the vehicle owner will be guilty of a felony punishable by imprisonment for up to two years and/or a fine of at least \$1,000 but not more than \$5,000. If the driver causes the death of another person, the vehicle owner is guilty of a felony punishable by imprisonment for up to five years and/or a fine of not less than \$1,000 or more than \$5,000.

The bills also provide that, upon receiving a record of a person's conviction or civil infraction determination for the unlawful operation of a vehicle or a moving violation of the Code or a substantially corresponding local ordinance while the person's license is expired for 60 days or more or indefinitely suspended, or whose license application has been denied, the Secretary of State immediately must impose an additional 30-day period of suspension or denial.

The bills state that this section of the Code does not apply to a person who has one currently effective suspension or denial on his or her Michigan driving record for failure to answer a citation or a notice to appear or failure to comply with an order or judgment, and the person has never been convicted of or received a civil infraction determination for a violation that occurred during that suspension or denial.

License Suspension/Restricted License

Secretary of State License Suspension. The bills delete current provisions under which a court must order the Secretary of State to suspend a person's driver's license, and may order the Secretary of State to issue a restricted license. Under the bills, the Secretary of State must suspend a person's license for a prescribed period of time, and may issue a restricted license under certain circumstances.

The Secretary of State must impose a one-year suspension for the following:

- Fraudulently altering or forging documents pertaining to motor vehicles.

- Joy riding.
- Felonious driving.
- Failing to stop and disclose identity at the scene of an accident resulting in death or serious injury.
- A felony in which a motor vehicle was used.
- Third- or fourth-degree fleeing and eluding.

A 90-day suspension will be required for 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. (If a vehicle is not used, the suspension must be for 30 days.)
- Theft of motor vehicle fuel by pumping it into a vehicle.
- Furnishing fraudulent identification to a minor, or a minor's use of fraudulent identification to purchase alcohol.

For 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 vehicle on a highway, the Secretary of State must suspend the person's license for 90 days, if he or she has no prior conviction for such an offense within seven years. A one-year suspension will be required if the person has one or more prior convictions within seven years.

For the misdemeanor offense of unauthorized use of a vehicle without intent to steal, the Secretary of State must impose a 90-day suspension if the person has no prior conviction for that offense within seven years. A one-year suspension will be required if the person has one or more prior convictions within seven years.

For a violation of the Michigan Liquor Control Code involving the transportation of an open container of alcohol, or the transportation of alcohol by a minor, the Secretary of State must suspend the person's license for 90 days if he or she has one prior conviction; the Secretary of State may issue a restricted license after the first 30 days of suspension. If the person has two or more prior convictions, a one-year suspension will be required, and a restricted license may be issued after the first 60 days.

For an OUIL offense, the Secretary of State will have to impose a 180-day suspension if the person has no prior convictions within seven years, and may issue a restricted license during all or part of the suspension except the first 30 days. For OWI,

a 90-day suspension will be required if the person has no prior convictions within seven years, although a 180-day suspension will be required if the person's ability to operate was visibly impaired due to the consumption of a controlled substance or a combination of alcohol and a controlled substance; a restricted license may be issued during all or part of the suspension.

If a person under 21 operates a vehicle with "any bodily alcohol content", a 30-day suspension will be required if he or she has no prior convictions within seven years, and a restricted license may be issued during all or part of the suspension. If the person has one or more prior convictions within seven years, a 90-day suspension will be required.

For child endangerment, a 180-day suspension must be imposed if the person has no prior convictions within seven years. For commercial vehicle drunk driving, a 90-day suspension will be required if the person has no prior convictions within seven years. A restricted license may be issued during all or part of either suspension.

As used in these provisions, "prior conviction" means a conviction for any of the following, whether under a law of this State, a substantially corresponding local ordinance, or a substantially corresponding law of another state:

- A violation or attempted violation of OUIL, OWI, OUIL/OWI causing death or serious impairment of a body function, operation by a minor with any bodily alcohol content, child endangerment, or commercial vehicle drunk driving.
- Negligent homicide, manslaughter, or murder resulting from the operation of a vehicle, or an attempt to commit any of those crimes.

Except for purposes of the suspensions prescribed for the operation of a vehicle by a minor having any bodily alcohol content, only one violation or attempted violation of that offense may be used as a prior conviction. If two or more convictions for operation by a minor are for violations arising out of the same transaction, only one may be used to determine whether the person has a prior conviction.

Restricted License. Under the bills, a restricted license will permit a person to drive in the course of his or her employment or occupation, and/or to and from any combination of the following: the person's residence; the person's work location; a court-ordered alcohol or drug education or treatment

program; the court probation department; a court-ordered community services program; an educational institution at which the person is enrolled; and/or a place of regularly occurring medical treatment for a serious condition of the person or a member of his or her household or immediate family.

While driving, the person must carry proof of his or her destination and the hours of any employment, class, or other reason for traveling, and must display that proof upon a peace officer's request.

Vehicle Group Designations. The Code requires the Secretary of State to suspend or revoke all vehicle group designations on a person's license upon receiving notice of a conviction or civil infraction determination for certain offenses. Currently, a one-year suspension is required for OUIL, OWI, OUIL/OWI causing death or serious impairment, or commercial vehicle drunk driving, while operating a commercial vehicle. Revocation for at least 10 years is required for any combination of two such violations. The bills would include operation by a minor with any bodily alcohol content, and child endangerment, while operating a commercial vehicle. Regarding the combination of violations, the bills refer to violations "arising from 2 or more separate incidents".

The bills also require revocation for at least 10 years for two six-point violations while operating a commercial vehicle. (Six-point violations include: manslaughter, negligent homicide, or a felony resulting from the operation of a vehicle; OUIL; OUIL/OWI causing death or serious impairment; failing to stop and disclose identity at the scene of an accident; operating a vehicle in a reckless manner; and fleeing and eluding.)

In addition, the bills require revocation for life if a licensee is convicted or found responsible for a felony in which a commercial vehicle was used and that involved the manufacture, distribution, or dispensing of a controlled substance or possession with intent to manufacture, distribute, or dispense (which currently is subject to a revocation of at least 10 years). The bills also require revocation for life if a licensee is convicted of an offense subject to a one- or three-year suspension after having been approved for the issuance of a vehicle group designation following a 10-year suspension.

Appeal to Hearing Officer/Restricted License

The Code requires the Secretary of State to appoint a hearing officer to hear appeals from persons aggrieved by a final determination of the

Secretary of State denying, suspending, or revoking a license. The hearing officer may issue subpoenas to compel attendance of witnesses, punish a witness for contempt, swear witnesses, and exemplify records. Under the bills, a hearing officer also may take additional testimony as he or she considers appropriate. The bills provide that a verbatim record of the hearing must be made. The hearing officer must include his or her findings of fact and conclusions of law in the record.

Under the bills, if a person whose license has been denied or revoked for certain violations applies for a license or reinstatement of a license after the required amount of time has elapsed, the hearing officer may issue a restricted license, setting restrictions upon operating a vehicle as the hearing officer determines are appropriate. (The applicable violations are: two convictions within seven years of a drunk driving offense or negligent homicide, manslaughter, or murder resulting from operation of a vehicle; three or more such convictions within 10 years; or OUIL/OWI causing death or serious impairment.) If the officer issues a restricted license following a hearing held after October 1, 1999, he or she must do both of the following:

- Require installation of a functioning ignition interlock device that meets or exceeds the model specifications of the National Highway Traffic Safety Act, on each vehicle the person owns or intends to operate, at the person's expense.
- Condition issuance of a restricted license upon verification by the Secretary of State that an ignition interlock device has been installed.

The initial period for requiring the device must be one year. After that time, the hearing officer may continue the requirement for any length of time.

If the hearing officer issues a restricted license to a person who intends to operate a vehicle owned by his or her employer, the Secretary of State must notify the employer of the employee's license restriction that requires the installation of an ignition interlock device. The employer is not required to install such a device on the employer-owned vehicle. These provisions do not apply to a vehicle that is operated by a self-employed individual who uses it for both business and personal use.

Judicial Review

The Code provides that a person may petition the circuit court for a review of a final determination of the Secretary of State denying, suspending, revoking, or restricting a license (unless the sanction was imposed as part of a sentence for a drunk driving or substance abuse offense). The court must enter an order setting the cause for hearing. Except as otherwise provided, the court may take testimony and examine all the facts and circumstances relating to the determination, and may affirm, modify, or set aside the denial, suspension, revocation, or restriction. In reviewing a Secretary of State determination resulting in a license denial or revocation due to drunk driving or negligent homicide, manslaughter, or murder resulting from the operation of a vehicle, the court must confine its consideration to a review of the record and may not grant relief.

Under the bills, the court may take testimony and examine the facts and circumstances relating to the following:

- A denial, suspension, restriction, or revocation concerning a person who is unable to drive due to a physical or mental disability; a driver who was involved in an accident resulting in death; a person who was involved in three accidents resulting in personal injury or property damage within 24

months; someone who has received 12 or more points within two years; or a person convicted of violating a license restriction or condition.

- A suspension or revocation for the unlawful operation of a vehicle or a moving violation by a person whose license has been suspended or revoked.
- A license suspension during a probationary period.
- A suspension for a first-time refusal to submit to a chemical test.

In other cases, the court must confine its consideration to a review of the record for a statutory legal issue, and may not grant restricted driving privileges.

Criminal Penalties

Child Endangerment. The bills make it a misdemeanor to commit a drunk driving offense (OUIL, OWI, OUIL/OWI causing death or serious impairment, or operation by a minor with any bodily alcohol content) while another person who is under 16 years old is occupying the vehicle. The offense is punishable by imprisonment for up to one year and/or a fine of up to \$1,000. The judgment of sentence may include vehicle forfeiture, as provided in the bills. If the violation occurs within seven years of a prior conviction or within 10 years of two or more prior convictions, the court must order vehicle immobilization in the judgment of sentence (unless the vehicle is ordered forfeited). A person may be charged with, convicted of, or punished for the drunk driving offense that is committed with a passenger under 16, although points may not be assessed for both violations arising out of the same transaction.

OUIL. Currently, if an OUIL violation occurs within seven years of a prior conviction, the person must be sentenced to pay a fine of \$200 to \$1,000 and either 1) community service for 10 to 90 days plus possible imprisonment for up to one year; or 2) imprisonment for at least 48 consecutive hours but not more than one year, plus community service for up to 90 days. Under the bills, the offender must be fined as currently required, and sentenced to either 1) imprisonment for at least five days but not more than one year, including at least 48 hours served consecutively; or 2) community service for at least 30 but not more than 90 days.

If the violation occurs within 10 years of two or more prior convictions, the person currently must be sentenced to a fine of \$500 to \$5,000 and either 1) imprisonment under the jurisdiction of the

Department of Corrections (DOC) for one to five years; or 2) probation with jail for 30 days to one year, including 48 hours served consecutively. Under the bills, if a person receives probation and jail, he or she also must perform community service for at least 60 but not more than 180 days.

Allowing Drunk Driving. The Code prohibits the owner of a vehicle or a person in charge or control of a vehicle from authorizing or knowingly permitting it to be operated by a person who is under the influence or who has an alcohol content of at least 0.10 gram per 100 milliliters of blood, 210 liters of breath, or 67 milliliters of urine. The penalty is imprisonment for up to 90 days (93 days under the bills) and/or a fine of not less than \$100 or more than \$500. Under the bills, if the person operating the vehicle causes the death of another person, the owner or person in charge of the vehicle will be guilty of a felony punishable by imprisonment for up to five years and/or a fine of not less than \$1,500 or more than \$10,000. If the vehicle operator causes serious impairment of a body function of another person, the offense is a felony punishable by imprisonment for up to two years and/or a fine of at least \$1,000 but not more than \$5,000.

OWI. Under the Code, if an OWI violation occurs within seven years of one prior conviction, the person must be fined \$200 to \$1,000 and sentenced to either 1) community service for 10 to 90 days plus possible imprisonment for up to one year; or 2) imprisonment for one year and possible community service for up to 90 days. Under the bills, the person must be fined as presently required and sentenced to: 1) imprisonment for at least five days but not more than one year, including at least 48 hours served consecutively; and/or 2) community service for at least 30 but not more than 90 days.

Currently, if the violation occurs within 10 years of two or more prior convictions, the person must be fined \$200 to \$1,000 and sentenced to either 1) community service for 10 to 90 days and possible imprisonment for up to one year; or 2) imprisonment for up to one year and possible community service for up to 90 days. Under the bills, the person must be fined at least \$500 but not more than \$5,000 and sentenced to either 1) imprisonment under the DOC's jurisdiction for not less than one or more than five years; or 2) probation with imprisonment in the county jail for at least 30 days but not more than one year, including at least 48 hours served consecutively, plus community service for at least 60 but not more than 180 days.

Operation by a Minor. The Code makes it a misdemeanor for a person under 21 with "any bodily alcohol content" to operate a vehicle. If a violation occurs within seven years of one or more prior convictions, the person may be sentenced to community service for up to 60 days and/or a fine of up to \$500. Under the bills, the person also may be imprisoned for up to 93 days. ("Any bodily alcohol content" means an alcohol content of at least 0.02 gram but not more than 0.07 gram per 100 milliliters of blood, 210 liters of breath, or 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.)

Commercial Vehicle Drunk Driving. The Code prescribes separate penalties for a person who operates a commercial motor vehicle while he or she has an alcohol content of at least 0.04 gram but not more than 0.07 gram per 100 milliliters of blood, 210 liters of breath, or 67 milliliters of urine. If a person commits this offense within 10 years of one prior conviction, he or she may be imprisoned for up to one year and/or fined up to \$1,000. Under the bills, this penalty applies to a violation within seven years of one prior conviction. If a violation occurs within 10 years of two or more prior convictions, bills provide that the person is guilty of a felony punishable by a fine of at least \$500 but not more than \$5,000 and either 1) imprisonment under the DOC's jurisdiction for at least one but not more than five years; or 2) probation with imprisonment in the county jail for at least 30 days but not more than one year, including at least 48 hours served consecutively, plus community service for at least 60 but not more than 180 days.

"Prior Conviction". Under the bills, for purposes of the criminal penalties, the term "prior conviction" means a drunk driving offense (OUIL, OWI, OUIL/OWI causing death or serious impairment, operation by a minor, child endangerment, or commercial vehicle drunk driving), or negligent homicide, manslaughter, or murder resulting from the operation of a vehicle or an attempt to commit one of those crimes. If two or more such convictions are for violations arising out of the same transaction, only one may be used to determine whether the person has a prior conviction. Except for purposes of sentence enhancement for operation by a minor, only one violation of that offense may be used as a prior conviction.

(Currently, for OUIL, "prior conviction" means that offense or OUIL/OWI causing death or serious impairment. For OWI, "prior conviction" means OUIL, OWI, or OUIL/OWI causing death or serious

impairment. For operation by a minor, "prior conviction" includes that offense, OUIL, OWI, or OUIL/OWI causing death or serious impairment. For commercial vehicle drunk driving, "prior conviction" includes that offense, OUIL, OWI, or OUIL/OWI causing death or serious impairment.)

Ignition Interlock Device

Currently, the Department of State must approve an ignition interlock device certified by a Department-approved laboratory, and must publish a list of all manufacturers of approved certified devices. A laboratory that certifies an ignition interlock device must immediately notify the Department. To be included on the Department's list, a manufacturer must file copies of an affidavit that the device is an alcohol concentration measuring device that prevents a motor vehicle from being started at any time without first determining the operator's breath alcohol level; and that the device is calibrated to prevent the vehicle from starting if that level reaches 0.02 gram per 210 liters of breath. Under the bills, a manufacturer also must file copies of a bond or a letter of credit and evidence of insurance (as described below). In addition, the bills require a manufacturer to give the Secretary of State a list of installers authorized to install and service its ignition interlock devices; agree to have service locations within 50 miles of any location within this State; agree to monitor installed devices periodically and, if monitoring indicates that a device has been circumvented, to communicate that to the Secretary of State; and agree to provide a device without cost to a person whose gross income for the previous tax year was under 150% of the official poverty line. The person must pay a maintenance fee to the installer of not more than \$1 per day.

The bills require an ignition interlock device to be calibrated to render the motor vehicle incapable of being started if the device detects an alcohol content of 0.025 gram or more per 210 liters of breath. The device also must be set to take samples periodically while the vehicle is in operation and to do one or both of the following:

- Emit a warning signal when the device detects an alcohol content of 0.025 gram or more per 210 liters of breath.
- Render the vehicle inoperable as soon as it is no longer being operated, if the device detects an alcohol content of 0.04 gram or more per 210 liters of breath.

The bills require an ignition interlock device to be serviced according to the manufacturer's

standards. Service must include, at least, physical inspection of the device and vehicle for tampering, calibration of the device, and monitoring of the data contained within its memory. Only authorized employees of the manufacturer or the Department may observe the installation of a device, and reasonable security measures must be taken to prevent the customer from observing the installation or obtaining access to installation materials.

The bills provide that the State, the Department, and its officers, employees, and agents are not liable in any claim or action that may arise, directly or indirectly, out of any act or omission by a manufacturer, installer, or servicing agent of an ignition interlock device that results in damage to persons or property.

The bills prohibit a person from selling, leasing, installing, or monitoring an ignition interlock device unless the manufacturer and provider carry liability insurance covering product liability, including insurance to indemnify the Department and any person injured as a result of a design defect or the calibration or removal of the device, or a misrepresentation about the device. The insurance must be in an amount of at least \$1 million per incident.

The bills also prohibit a person from selling, leasing, or installing an ignition interlock device unless its manufacturer has obtained an executed bond or a renewal certificate for that bond. The bond must be in the amount of \$50,000 with a surety approved by the Department, and be conditioned to indemnify a person who had a device installed on his or her vehicle for monetary loss caused by the manufacturer's fraud, cheating, misrepresentation, or contractual default, whether it was done by the manufacturer or by an agent or employee of the manufacturer. The surety must make indemnification only after a court has entered final judgment against the manufacturer or its employee or agent.

The provider of insurance or the surety on a bond may cancel it upon 30 days' written notice to the Department, and will not be liable for a claim arising from an event that occurs after the effective date of the cancellation.

The bills establish criminal penalties for a person who provides the Department with false information concerning certification of a device or a manufacturer's compliance, and for a person who fails to notify the Department that a device no longer meets the statutory requirements (as

manufacturers are required to do). If a violation is committed knowingly, the offense is a felony punishable by imprisonment for at least five years but not more than 10 years or a fine of at least \$5,000 but not more than \$10,000, or both, plus costs of prosecution. If a violation is negligently committed, the offense is a misdemeanor punishable by imprisonment for up to one year or a fine of up to \$1,000, or both, plus costs of prosecution.

Under the Code, a police officer who receives an accident report must forward it to the State Police Director on forms prescribed by the Director. The bills require the accident report form to include, when applicable, whether an ignition interlock device was installed in a vehicle involved in an accident.

Prohibited Purchase or Transfer

The bills prohibit a person from purchasing or leasing another vehicle or an interest in another vehicle with the intent to circumvent the restrictions created by immobilization. In addition, a person may not transfer or attempt to transfer ownership or right of possession of a vehicle subject to forfeiture or ordered forfeited with the intent to avoid the vehicle's forfeiture.

While a vehicle is subject to a temporary plate, forfeiture, or immobilization, a person may not without a court order transfer or assign the title or an interest in the vehicle to someone who is exempt from paying the use tax under Section 3(3)(a) of the Use Tax Act (which exempts a transfer if the transferee or purchaser is the spouse, parent, sibling, child, stepchild, stepparent, stepsibling, grandparent, grandchild, legal ward, or legally appointed guardian of the transferor).

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

Other Provisions

Attempted Violations. The bills provide that when assessing points, taking licensing or registration actions, or imposing other sanctions under the Code for a conviction of an attempted violation of a law of this State, a substantially corresponding local ordinance, or a substantially corresponding law of another state, the Secretary of State or the court must treat the conviction the same as if it were a conviction for the completed offense. The bills also require the court to impose a criminal penalty for a conviction of an attempted violation of the Code or a substantially corresponding local ordinance in the same manner as if the offense had been completed. (These requirements currently apply to convictions for attempted drunk driving offenses.)

Registration or Title Denial. The bills prohibit the Secretary of State from issuing a registration or certificate of title if a person's license is suspended, revoked, or denied, or the operator has never been licensed at the time of the application, for a third or subsequent drunk driving violation or a fourth or subsequent suspension or revocation for driving without a license. This provision will take effect June 1, 2000.

Habitual Violators. The Code prohibits the Secretary of State from issuing a license to a person who is a habitual violator of the drunk driving laws. Convictions of any of the following offenses are prima facie evidence that the person is a habitual violator:

- Any combination of two convictions within seven years for OUIL, OWI, or OUIL/OWI causing death or serious impairment.
- Any combination of three such convictions within 10 years.

The bills include in these provisions convictions for

child endangerment, commercial vehicle drunk driving, and negligent homicide, manslaughter, or murder resulting from the operation of a vehicle, as well as attempted violations. The bills also include a combination within seven years of one conviction for operation by a minor with any bodily alcohol content plus one conviction for another violation, and a combination within 10 years of one conviction of operation by a minor plus two convictions for any of the other violations.

In addition, the Code also prohibits the Secretary of State from issuing a license to someone who is a habitually reckless driver or a habitual criminal, and describes convictions that are prima facie evidence that the person is such a driver or criminal. (Prima facie evidence refers to evidence that is sufficient to establish a given fact, which means that a party who wants to overcome that evidence must present sufficient proof to do so.)

The bills provide that for a denial based on prima facie evidence, a person must rebut the presumption resulting from prima facie evidence by clear and convincing evidence before the Secretary of State may issue a license to the person. (This provision codifies a current administrative rule that states, "The hearing officer shall not order that a license be issued to the petitioner unless the petitioner rebuts the presumption established by section 303 of the act by clear and convincing evidence." R 257.313)

Failure to Answer or Appear. The bills prohibit the Secretary of State from issuing a license to a person who has failed to answer a citation or notice to appear in court or for any matter pending or fails to comply with an order or judgment of the court, including paying all fines, costs, fees, and assessments, until the person answers the citation or notice to appear or complies with the order.

Required Revocation. The Secretary of State currently is required to revoke the driver's license of a person who has any combination of two convictions within seven years (or three convictions within 10 years) for OUIL, OWI, OUIL/OWI causing death or serious impairment, or negligent homicide, manslaughter, or murder resulting from the operation of a vehicle. The bills include child endangerment and commercial vehicle drunk driving in the two- and three-conviction combinations, as well as attempted violations of the listed offenses. The combinations also may include one conviction for operation by a minor with any bodily alcohol content plus one or two of the other offenses.

Rehabilitation. Under the Code, before imposing sentence for a drunk driving conviction (OUIL, OWI, OUIL/OWI causing death or serious impairment, or operation by a minor), the court must order the person to undergo screening and assessment to determine whether he or she is likely to benefit from rehabilitative services, including alcohol or drug education and treatment programs. The court may order the person to participate in and successfully complete one or more rehabilitative programs as part of the sentence. Under the bills, if the person has one or more prior convictions, the court must order the person to participate in and successfully complete one or more rehabilitative programs. The bills also include child endangerment among the drunk driving offenses subject to these provisions.

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 will not apply to OUIL, OWI, or commercial vehicle drunk driving punishable as a felony, or OUIL, OWI, operation by a minor, child endangerment, or commercial vehicle drunk driving joined with a felony charge.

Preliminary Breath Test Results. Under the Code, a peace officer may require a person to submit to a preliminary chemical breath analysis under certain circumstances. The results of the analysis are admissible in a drunk driving prosecution or in an administrative hearing for one of the following purposes:

- To assist the court or hearing officer in determining a challenge to the validity of an arrest.
- As evidence of the defendant's breath alcohol content, if offered by the defendant.
- As evidence of the defendant's breath alcohol content, if offered by the prosecution to rebut testimony or other evidence that is offered or elicited to prove that the defendant's breath alcohol content was lower at the time of the charged offense than when a chemical test was administered upon arrest.

Under the bills, the defendant's use of the results will be limited to rebutting testimony elicited on cross-examination of a defense witness that the defendant's breath alcohol content was higher at the time of the charged offense than when a

chemical test was administered upon arrest.

Records and Reports. The Code requires the Department of State Police to prepare the Michigan Annual Drunk Driving Audit, which must include information about alcohol-related accidents and arrests. The bills also require the report to include the number of arrests made for child endangerment.

The Secretary of State is required to compile a report of dispositions of drunk driving charges by each judge for inclusion in the State Police report. Under the bills, the Secretary of State's report must include the number of vehicles ordered immobilized or forfeited.

The Code also requires the Secretary of State to maintain a computerized central file that provides a historical driving record for a person. The bills require the driving record to indicate a temporary registration plate, vehicle immobilization, or vehicle forfeiture.

In addition, the Code requires municipal judges and court clerks to keep a record of every case in which a person is charged with a violation of the Code or a local ordinance regulating the operation of vehicles on highways. Municipal judges and court clerks must prepare an abstract of the record, containing specified information, and forward it to the Secretary of State. Under the bills, an abstract or report also must include the vehicle identification number and registration plate number of all vehicles that are ordered immobilized or forfeited. The bills also require the Secretary of State's vehicle registration records to disclose which vehicles are assigned a temporary registration plate or are immobilized.

Transporting Alcohol. The Code prohibits a person from transporting alcohol in an open container within the passenger compartment of a vehicle. The bills refer to a person "who is an operator or occupant". The Code also prohibits a person under 21 from transporting or possessing alcohol in a vehicle. The bills refer to a person under 21 who transports or possesses alcohol "as an operator or occupant".

Fleeing and Eluding. The Code provides for four degrees of fleeing and eluding (failing to stop at the direction of a police officer). If a violation results in serious injury to an individual, the offense is second-degree fleeing and eluding. Currently, "serious injury" means a physical injury that constitutes permanent serious bodily disfigurement or that seriously and irreparably impairs the

functioning of a body organ or limb. The bills redefine "serious injury" as a physical injury that is not necessarily permanent but that constitutes serious bodily disfigurement or that seriously impairs the functioning of a body organ or limb.

Driver License Clearance Fee. Under the Code, a person's license suspension remains in effect until the Secretary of State is notified by the court that the person has answered a citation or notice to appear or paid a fine or costs, and the person has paid a \$25 driver license reinstatement fee. The bills refer to the fee as a "driver license clearance fee" and specify that it must be paid for each failure to answer a citation or to pay a fine or costs.

The Code also requires a \$25 license reinstatement fee from a person who failed to answer two or more parking violation notices or citations pertaining to parking for persons with disabilities; failed to answer six or more parking violation notices or citations regarding illegal parking; or failed to appear in response to a citation issued for, or a judgment or order involving, a State civil infraction. The bills refer to a "clearance fee".

Currently, if the court determines that a person is not responsible for any of the parking violations for which his or her license was suspended, the court must waive payment of the fee. The bills provide, instead, that the court may waive the fee if the court determines that the person is responsible for only one parking violation involving handicapper parking or fewer than six illegal parking violations.

Currently, the court must transmit 60% (\$15) of a driver license reinstatement fee to the Secretary of State to defray the expenses in processing the suspension and reinstatement of driver's licenses. Under the bills, \$6 of each fee must be transmitted to the Secretary of State.

Senate Bill 268

The bill provides that if a person operates an off-road vehicle (ORV) while under the influence of intoxicating liquor and/or a controlled substance, and causes the death of another, the person is guilty of a felony punishable by imprisonment for up to 15 years, a fine of not less than \$2,500 or more than \$10,000, or both. If the person causes a serious impairment of a body function of another, the person is guilty of 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.

Senate Bill 269

The bill allows 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 expenses incurred in relation to that incident, including expenses for an emergency response and expenses for prosecuting the person. The bill applies to offenses involving the operation of a motor vehicle, snowmobile, ORV, aircraft, vessel, or locomotive engine. A local unit may elect to be reimbursed for expenses under the bill or a local ordinance, or a combination of the two. A local unit may not be fully reimbursed more than once for any expense incurred by that local unit.

A reimbursement requirement may be imposed as part of a sentence for a person convicted of OUIL, OWI, child endangerment, or commercial vehicle drunk driving, when operating the types of vehicles to which the bill applies. In addition, reimbursement may be ordered for felonious driving, negligent homicide, manslaughter, or murder resulting 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 may 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 may 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 may 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 may order the person convicted to reimburse each unit of government for its expenses.

The reimbursement must be paid to the clerk of the court, who must 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 must be made immediately. The court may require, however, that the person reimburse the costs within a specified period or in specified installments.

If the convicted person is placed on probation or paroled, any reimbursement that is ordered must be a condition of the probation or parole. If the person fails to comply with the reimbursement order, and has not made a good faith effort to do so, parole or probation may be revoked. When determining whether to revoke probation or parole, the court or parole board must 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 might have a bearing on his or her ability to pay. A person may not be imprisoned, jailed, or incarcerated for failure to make a reimbursement unless the court determines that he or she has the resources to pay and has not made a good faith effort to do so.

A reimbursement order may 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.

MCL 324.81134 (S.B. 268)
760.1f (S.B. 269)
257.204a et al. (S.B. 625)
257.204b et al. (S.B. 627)
257.727 & 257.732 (S.B. 869)
257.320a (S.B. 870)
257.303 & 257.625a (S.B. 953)
257.322 et al. (H.B. 4210)
257.625b (H.B. 4576)
257.624a et al. (H.B. 4959)
257.904c (H.B. 4960)
257.320b et al. (H.B. 4961)
257.904 (H.B. 5122)
257.904 (H.B. 5123)
257.8a et al. (H.B. 5951)
257.310d & 257.321a (H.B. 5952)
750.367c et al. (H.B. 5953)
752.192 (H.B. 5954)
436.1703 (H.B. 5955)
257.625i (H.B. 5956)

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 addresses 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 will be subject to a series of sanctions ranging from the issuance of temporary plates to the forfeiture of the vehicle. When a police officer seizes vehicle plates and issued temporary plates, drivers will see an immediate consequence of their actions. A vehicle then may be immobilized or its operation by the offender may be restricted. Drivers also will be subject to an additional 30-day suspension for driving while a license was suspended or denied. Forfeiture will be required only for the most dangerous and incorrigible offenders.

The bills' range of sanctions will mitigate the potential hardship on a driver's family, since a vehicle can still be driven with restricted plates or if it is equipped with a device that prevents only the offender from driving the vehicle. Also, a court may 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, the bills will combat drunk driving by requiring an ignition interlock device as a condition of some restricted licenses; increasing sanctions for commercial drunk driving; incorporating a standard definition of "prior conviction" for purposes of sentence enhancement; and including in that definition negligent homicide, manslaughter, or murder resulting from the operation of a vehicle.

Supporting Argument

One aspect of the drunk driving problem that has not been previously addressed is the danger in which a child is placed when he or she is the passenger of a driver who is impaired by or under the influence of alcohol or drugs. When a driver engages in impaired driving or driving under the influence, the potential for danger to others is significantly increased if he or she has passengers. When a passenger is a minor, who is more impressionable than an adult and more vulnerable to being caught in such a situation, the offense becomes even more irresponsible. Under the bills, drunk drivers who jeopardize the safety of children will be subject to additional sanctions.

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 will be used first to pay the expenses of the forfeiture and sale. Local units also may receive reimbursement from convicted drunk drivers for medical and personnel expenses of responding to an emergency.

Supporting Argument

The bills clarify in statute the burden and standard of proof required for the issuance of a license to someone whose license has been revoked or denied on the ground that he or she is a habitual drunk driver, a habitually reckless driver, or a habitual criminal. Presently, the Code states that certain convictions are prima facie evidence that a person is a habitual offender, and a license may not be issued to such a person until a specified period of time has elapsed. Current administrative law makes it clear that if a person's license is denied or revoked based on the presumption that he or she is a habitual offender, the person has the burden of overcoming that presumption by clear and convincing evidence. Under the rule, this may include evidence that the petitioner's alcohol or substance abuse problems, if any, are under control and likely to remain under control; that the petitioner represents a low or minimal risk of repeating his or her past abusive behavior or operating a vehicle while impaired by, or under the influence of, alcohol and/or controlled substances; or that the petitioner has the ability and motivation to drive safely and within the law. In addition, the rule requires the petitioner to prove, by clear and convincing evidence, that he or she has completely abstained from the use of alcohol and controlled substances (except as prescribed by a licensed health care professional) for at least six consecutive months. Thus, the law already places the burden on the offender to prove that he or she will not drink and drive, and requires proof by clear and convincing evidence.

Opposing Argument

The bills remove the authority of a court to suspend a driver's license or issue a restricted license, and instead give this power to the Secretary of State. These amendments deny the right of a defendant to have a neutral third party make decisions about license suspension and restrictions. Currently, although a person's license may be suspended automatically for certain violations, the person can petition the court for a restricted license. The Secretary of State is represented at a hearing by the Attorney General's office, both sides have the opportunity to make arguments, and the court

makes a decision. Under the bills, however, the Secretary of State will decide whether to suspend a license and issue a restricted license, a person may appeal to the court only after exhausting his or her administrative remedies, and the court may review legal issues only.

Response: Current law contains a dual process under which both the court and the Secretary of State suspend driver's licenses. The bills eliminate the duplication of this responsibility. The Secretary of State will not suspend a person's license until adjudication has already taken place, and the period of suspension will be as prescribed in the Code.

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.

Opposing Argument

Providing for the Secretary of State, rather than the courts, to suspend a person's license may lead to some confusion and delay. Currently, when there is a conviction, the court takes away the license. Under the bills, however, people will be leaving the courtroom with their licenses and will keep them until the Secretary of State is notified of guilt and takes the proper steps. In addition, the courts currently can place special conditions on license suspensions. It is not clear how the Secretary of State will notify the courts of any conditions it imposes, so that they can monitor compliance.

Opposing Argument

The bills may lead to increased litigation, since a conviction for impaired driving may be used to enhance the sentence for a subsequent OUIL offense. Since there will be little value in pleading to impaired, drunk driving defendants will be more motivated to litigate. In fact, attorneys already are being encouraged to try all drunk driving cases (*Michigan Lawyers Weekly*, 10-26-98).

Opposing Argument

The bills' provisions for immobilization do not apply to a suspension, revocation, or denial based on a violation of the Support and Parenting Time Enforcement Act. This exception undermines the public policy of holding parents responsible for their child support obligations and penalizing those who fail to comply.

Response: The new sanctions are designed

for dangerous drivers.

Legislative Analyst: S. Lowe

FISCAL IMPACT

Administrative Costs

The Department of State may incur some increases in administrative costs due to increased responsibilities in the hearing and appeals process. Further, the Department of State will incur additional administrative costs and technical computer programming costs due to record-keeping procedures involved in the hearings and issuance of temporary license plates. Of the approximately 7,000,000 licensed drivers in Michigan, 370,000 drivers had their licenses suspended or revoked in 1997. Currently, there are no data to indicate how many more people will fall under the purview of the increased penalties of this bill.

To defray the cost of issuing restricted registration plates, the State will impose a \$125 fee for the plates.

Corrections Costs

(The attached table lists the crimes and penalties contained in this legislation.)

Senate Bill 268. There are no data currently available that would indicate how many people might be convicted of operating an ORV causing death or serious impairment. The prescribed punishment is a maximum sentence of 15 years, a fine of \$2,500-\$10,000, or both for causing death, and five years in prison, a fine of \$1,000-\$5,000, or both for causing serious impairment. Assuming that an offender receives a prison sentence and serves two-thirds of the maximum sentence, on average, the cost of incarceration for one offender convicted of each of these new crimes will be \$240,000 annually.

Senate Bill 625 and House Bills 5955, 4959, 4961, and 5952. These bills create new misdemeanor offenses, increase the penalty for existing misdemeanors, and broaden the applicability of certain misdemeanors. Because these bills deal with misdemeanors and district court decisions, there are no data available to indicate the number of convictions or trends in recent dispositions that would provide insight into the fiscal impact that these bills may have on local government. Additionally, the cost of incarceration varies by

county.

In House Bill 4959, disposing of a vehicle to avoid forfeiture is reduced from a four-year felony to a misdemeanor, which will shift the cost of incarceration from the State to local government. There were no circuit court dispositions for this offense in 1996.

Senate Bill 627. There are no data to indicate the number of offenders convicted of operating a commercial vehicle under the influence and no information on the number of prior violations an offender generally incurs. Since the bill creates a new felony for two or more prior convictions and imposes either a one- to five-year prison sentence or a combination of probation, jail, or community service, costs for State or local government may increase.

Senate Bill 870. According to the 1996 Michigan Annual Drunk Driving Audit, there were 25,928 convictions for driving under the influence and 30,495 convictions for driving impaired. The data do not indicate how many of these convictions were committed by offenders with prior convictions, or even if an individual offender was convicted more than once during the time period of the audit. All of this means that there are few data at the statewide level to provide a basis for understanding the fiscal impact of the parts of this legislation that trigger penalties by prior convictions.

The bill adds to the prior convictions that can be considered for an OUIL III conviction and this may affect expenditures through the County Jail Reimbursement Program (CJRP), as well as the State costs of incarceration. The CJRP reimburses counties for housing prisoners who would otherwise have gone to prison and specifically reimburses counties for incarcerating OUIL III offenders. In 1996, there were 2,038 convictions for OUIL III and 127 convictions for OUIL resulting in death or serious impairment. Because there are so few death or serious impairment convictions compared with the number of OUIL III, one may assume that the OUIL III convictions result from prior OUIL. Because the legislation adds OWI to the convictions considered as a prior to OUIL III, and, as cited above, the pool of OWI convictions is 18% larger than the number of OUIL convictions, one may assume that the number of OUIL III will double.

According to the 1996 court disposition data, 617 OUIL III convictions resulted in a prison sentence, another 1,164 resulted in probation, and 225

received a sentence with jail time. Assuming that the number of OUIL III convictions will double and that they are sentenced in the same manner, counties may seek reimbursement for an additional 225 individuals, with a jail term required in the bill of 30 days to one year. Based on fiscal year 1996-97 reimbursements, CJRP reimbursements may increase by \$5.3 million.

There are no data to indicate how many offenders will be convicted of a drunk driving offense with a passenger under 16 years old in the vehicle. This new misdemeanor will increase costs for local government for the cost of incarcerations and may be used as an enhancement to felony charges, thereby increasing the costs to the State for incarceration.

Also, the bill establishes penalties for the owner of a vehicle, when that person has permitted it to be driven by someone the owner knows to be intoxicated. The penalty is based on the outcome of use of the vehicle with new penalties for death or serious injury. In 1996, 127 people were convicted of driving a motor vehicle while intoxicated causing death or driving a motor vehicle while intoxicated causing injury. However, the data do not indicate how many of the 127 convicted were allowed to operate a vehicle owned or controlled by another person. The State will incur costs for incarceration and/or receive additional fine revenue.

House Bill 4576 may potentially increase costs for the State. Under current law, when a judge attaches a special condition of substance abuse treatment to a sentence, often an offender is assessed through a service provider contracted by the Department of Corrections (DOC). If the results of the assessment indicate that an offender would benefit from treatment, the offender is provided with a list of treatment providers also contracted by the DOC. As part of that special condition, the judge may require the offender to reimburse the DOC for the contracted services. In certain circumstances, such as when the offender has private insurance, the offender may pay for services directly, although some insurance policies may not pay for court-ordered treatment.

Given this pattern, in which the DOC contracts for services and is reimbursed by offenders, and given that the bill will require a person with one or more prior convictions to participate in and successfully complete one or more appropriate rehabilitative programs at his or her own expense, costs for substance abuse treatment funded through the DOC budget and the costs of reimbursement

collection may increase. According to the 1996 Michigan Annual Drunk Driving Audit, there were 59,397 offenders convicted of violating one of the sections covered in this bill. Of those convicted, 25,464 were sentenced to substance abuse assessment. The data do not indicate the number of offenders who had an second or subsequent conviction, and would, therefore, be required to seek treatment under this bill. The fiscal year 1997-98 budget provides \$17.2 million for substance abuse administration and testing of prisoners, parolees, and probationers. The cost to collect substance abuse treatment reimbursement is not specified.

House Bill 5122 will have an indeterminate fiscal impact on State and local government.

According to the Department of Corrections criminal court disposition report, in 1996, four offenders were convicted of operating a vehicle without a licence. Of the four, two were sentenced to prison with a maximum term of one year. Also, in 1996, there were 10 people convicted of allowing a vehicle to be operated on a suspended or revoked license. None of these offenders was sentenced to prison.

Assuming that two convictions a year result in prison commitment for operating a vehicle on a suspended or revoked license result in an accident causing serious impairment of body function (and are, therefore, subject to the penalty of five years in prison and/or a fine of \$1,000-\$5,000), and assuming that the offenders receive a prison sentence and serve about 3.3 years in a State prison, prison costs, on average, will increase by \$118,800 annually to incarcerate offenders convicted of this offense. The fiscal impact of the penalty for permitting a vehicle to be operated on a suspended or revoked license resulting in an accident causing death will be similar to this scenario.

Assuming that two convictions a year for operating a vehicle on a suspended or revoked license result in an accident causing death (and are, therefore, subject to the penalty of 15 years in prison and/or a fine of \$2,500-\$10,000), and assuming that the offenders receive a prison sentence and serve about 9.9 years in a State prison, prison costs, on average, will increase by \$356,400 annually to incarcerate offenders convicted of this offense.

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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.

Assuming that one conviction a year results in prison commitment for permitting a vehicle to be operated on a suspended or revoked license resulting in an accident causing serious impairment of body function, and assuming that the minimum sentence is less than 18 months, costs of incarceration will increase for local governments. Local government incarceration costs vary by county.

Emergency Response Cost Recovery

Senate Bill 269 will 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 will vary depending on the type of emergency unit sent, local costs, and the number of accidents per year.

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

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