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SFA



BILL ANALYSIS

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House Bill 4210 (Substitute H-7 as passed by the House)
House Bill 4576 (Substitute H-3 as passed by the House)
House Bill 4959 (Substitute H-2 as passed by the House)
House Bill 4960 (Substitute H-2 as passed by the House)
House Bill 4961 (Substitute H-1 as passed by the House)
House Bill 5122 (Substitute H-2 as passed by the House)
House Bill 5123 (Substitute H-2 as passed by the House)
House Bill 5951 (Substitute H-1 as passed by the House)
House Bill 5952 (Substitute H-2 as passed by the House)
House Bill 5953 (Substitute H-1 as passed by the House)
House Bill 5955 (Substitute H-1 as passed by the House)
House Bill 5956 (Substitute H-1 as passed by the House)

Sponsor: Representative Howard Wetters (House Bill 4210)
Representative Michael Hanley (House Bill 4576)
Representative Frank Fitzgerald (House Bill 4959)
Representative Charles Perricone (House Bill 4960)
Representative Patricia Godchaux (House Bill 4961)
Representative John Freeman (House Bill 5122)
Representative Penny Crissman (House Bill 5123)
Representative George Mans (House Bill 5951)
Representative Mark Schauer (House Bill 5952)
Representative Gloria Schermesser (House Bill 5953)
Representative William Callahan (House Bill 5955)
Representative Rose Bogardus (House Bill 5966)

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

Senate Committee: Judiciary

Date Completed: 9-15-98

CONTENT

All of the bills, other than House Bills 5953 (H-1) and 5955 (H-1), would 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 (OUIL), operating while impaired by alcohol and/or a controlled substance (OWI), and operating a commercial vehicle while intoxicated, as well as for driving without a license. The bills would do the following:

- Require the immobilization of a vehicle for drunk driving or driving without a license if the offender had prior convictions.

- Require the confiscation of a vehicle's license plate and the issuance of a temporary plate when the driver was detained for a violation subject to immobilization or forfeiture.
- Provide for the forfeiture of a vehicle if a person drove without a license and caused the death or serious impairment of a body function of another person, or if the vehicle owner knowingly permitted it to be operated by someone without a license.
- 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 14-day suspension in certain cases of driving without a license.**
- **Establish felony penalties for commercial vehicle drunk driving if the offender had prior convictions.**
- **Increase the penalty for allowing someone else to commit OUIL, and provide for immobilization of the owner's vehicle.**
- **Establish insurance, bond, and service requirements for manufacturers of ignition interlock devices.**

House Bill 5953 (H-1) would amend the Michigan Penal Code to require the Secretary of State to impose suspensions 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; or committing third- or fourth-degree fleeing and eluding. (The Penal Code currently allows a one-year suspension for the first two offenses, and requires a one-year suspension for the fleeing and eluding offenses.)

House Bill 5955 (H-1) would amend the Michigan Liquor Control Code to delete provisions concerning court-ordered license sanctions for 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.

All of the bills, except House Bills 4210 (H-7), 5122 (H-2), and 5123 (H-2), are tie-barred to all of the other bills (including House Bills 4210, 5122, and 5123), and would take effect October 1, 1999.

A more detailed description of the proposals to amend the Vehicle Code follows. (As a rule, the bills proposing Vehicle Code amendments are not identified by number.)

Vehicle Immobilization & Temporary Plates

Immobilization. The court could order immobilization for up to 14 days for OUIL, OWI, or OUIL/OWI causing death or serious impairment of a body function. The court would be required to order immobilization for 14 days if the violation occurred within seven years of a prior conviction.

The court would have to order immobilization for 180 days if the violation occurred within 10 years of two or more prior convictions.

For a violation involving driving without a license, or permitting another person to drive without a license, the court would have to order immobilization for 14 days if the offender had one prior suspension, revocation, or denial or any combination of two prior suspensions, revocations, or denials for this offense within the past seven years. The court would have to order immobilization for 180 days if the offender had any combination of three or more prior suspensions, revocations, or denials for this offense within the past seven years.

A mandatory immobilization order could not be suspended. A court could not order immobilization if the defendant were 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.

These immobilization provisions 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.
- For driving without a license, an individual who had no currently effective suspension or denial for failure to appear or to comply with a court order or 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 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 would have to order a vehicle immobilized by the use of any available technology that locked the ignition, wheels, or steering of the vehicle, or otherwise prevented any person or the defendant from operating the vehicle. The court could order an immobilized vehicle stored at a location and in a manner considered appropriate by the court, and

could order the convicted person to pay the cost of immobilization and storage.

The defendant would have to provide to the court the vehicle identification number and registration plate number of the vehicle involved in the violation. A defendant who was prohibited from operating a motor vehicle by vehicle immobilization could not purchase, lease, or otherwise obtain a motor vehicle during the immobilization period without prior court approval.

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 for immobilization, and could not operate or attempt to operate a vehicle that he or she knew or had reason to know had been ordered immobilized.

A person who violated these prohibitions would 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 conflicted with a court order of immobilization, the ordinance would be preempted.

Temporary Plates. When a peace officer detained the driver of a vehicle for a violation of a State law or local ordinance for which vehicle immobilization or forfeiture was required or could be ordered by the court, the officer would have to do the following:

- Immediately confiscate the vehicle's registration plate.
- Issue a temporary plate for the vehicle in a form prescribed by the Secretary of State.
- 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 would be valid for 100 days unless extended by the court.

Vehicle Transfer. A person could not transfer or attempt to transfer ownership or possession of a vehicle issued a temporary plate or subject to immobilization with the intent to avoid immobilization, or purchase or lease another vehicle or an interest in another vehicle with the

intent to circumvent the restrictions created by immobilization. A person could, however, return a leased vehicle to the lessor.

While a vehicle was subject to temporary plates or immobilization, a person could not without a court order transfer or assign the title or an interest in the vehicle to someone who was 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 would be a misdemeanor punishable by imprisonment for up to one year and/or a fine of up to \$1,000.

Vehicle Forfeiture

Driving without a License. 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 House Bill 5122 (H-2), a vehicle also could be forfeited or returned for a violation of driving without a license if the offender caused the serious impairment of a body function of another person. In addition, the offender would be guilty of a felony punishable by imprisonment for up to five years and/or a fine of at least \$1,000. "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 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, a vehicle could be forfeited if its owner knowingly permitted it to be operated by a person who did not have a license. If that person caused serious impairment of a body function, the vehicle owner would be guilty of a felony punishable by imprisonment for up to two years and/or a fine of up to \$1,000. If a person, limited partnership, partnership, or corporation were found guilty of this

offense, the court could order forfeiture.

Under House Bill 5123 (H-2), a person who drove without a license and caused the death of another person would be guilty of a felony punishable by imprisonment for up to 15 years and/or a fine of up to \$5,000. In addition, the court could order that the vehicle be forfeited or returned to its lessor.

If an unlicensed person were permitted to drive and caused the death of another, the person who knowingly permitted the vehicle's operation would be guilty of a felony punishable by imprisonment for up to two years and/or a fine of up to \$1,000. If a person, limited partnership, partnership, or corporation were found guilty, the court could order forfeiture or return of the vehicle.

The penalties under either bill would 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.

Drunk Driving. Under the Code, within three days after a person is convicted of drunk driving, 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. The prosecutor then has three days to notify all owners of the vehicle and anyone holding a security interest in it. An owner, lessee, or holder of a security interest has 14 days to file a claim of interest with the court. Within 21 days after the period for filing claims has expired, the court must hold a hearing to determine the legitimacy of any claim. House Bill 4959 (H-2) provides that if no claim is filed, the court must order the vehicle forfeited or returned to the lessor. If a claim is filed, the court must hold a hearing, as presently required.

The bill also specifies that the failure of the court or the prosecutor to comply with any time limit specified in these provisions would not preclude the court from ordering forfeiture or return of the vehicle, unless the court found that the owner or claimant suffered substantial prejudice as a result of the failure.

Currently, a person who knowingly conceals, sells, gives away, or otherwise transfers or disposes of a vehicle with the intent to avoid its forfeiture or return, is guilty of a felony punishable by imprisonment for up to four years and/or a fine of up to \$2,000. Under the bill, this offense would be a misdemeanor subject to imprisonment for up to

one year and/or a maximum fine of \$1,000.

License Suspensions/Restricted Licenses

Secretary of State License Suspensions. The bills would 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 would be required to suspend a person's license for a prescribed period of time, and could issue a restricted license under certain circumstances.

The Secretary of State would have to 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. (The Secretary could issue a restricted license after the first 180 days of the suspension.)

A 90-day suspension would 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.
- 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 would have to suspend the person's license for 90 days, if he or she had no prior conviction for such an offense within seven years. A one-year suspension would be required if the person had 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 would have to impose a 90-day suspension if the person had no prior conviction for that offense within seven years. A one-year suspension would be required if the person had 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 would have to suspend the person's license for 90 days if he or she had one prior conviction; the Secretary of State could issue a restricted license after the first 30 days of suspension. If the person had two or more prior convictions, a one-year suspension would be required, and a restricted license could be issued after the first 60 days.

For an OUIL offense, the Secretary of State would have to impose a 180-day suspension if the person had no prior convictions within seven years, and could issue a restricted license during all or part of the suspension except the first 30 days. For OWI, a 90-day suspension would be required if the person had no prior convictions within seven years, although a 180-day suspension would be required if the person were convicted for operating a vehicle when his or her 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 could be issued during all or part of the suspension.

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

For purposes of the alcohol-related offenses, "prior conviction" would mean 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 alcohol content, or commercial vehicle drunk driving.
- Negligent homicide, manslaughter, or murder resulting from the operation of a vehicle.

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 could be used as a prior conviction.

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 a violation of OUIL, OWI, or OUIL/OWI causing death or serious impairment, or commercial vehicle drunk driving, while operating a commercial vehicle. Under the bills, vehicle group designations would have to be revoked for at least 10 years for OUIL or OWI causing death or serious impairment while operating a commercial motor vehicle. A 10-year revocation also would be required for negligent homicide, manslaughter, or murder resulting from the operation of a commercial motor vehicle.

Restricted License. A restricted license would 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 was enrolled; 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; and/or to and from the person's residence and the site where an ignition interlock device was monitored.

Appeals

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. After a hearing, the hearing office may affirm, modify, or set aside the final determination. The bills would require a verbatim record of the hearing to be made, and would require the hearing officer to include his or her findings of fact and conclusions of law in the record.

The Code also 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. 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.

The bills would delete the provisions under which the court may take testimony and examine all the facts and circumstances, and may affirm, modify, or set aside a determination. The bills provide that, in reviewing a determination resulting in a denial, suspension, restriction, or revocation under the Code, the court would have to confine its consideration to a review of the record or the driving record for a legal issue, and could not grant restricted driving privileges. The bills would repeal sections of the Code permitting the court to stay a suspension or revocation, or to order the Secretary of State to issue a restricted license to a person whose license has been denied or suspended by the Secretary of State (MCL 257.323a and 257.323c).

Criminal Penalties

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, per 210 liters of breath, or per 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 caused the death of another person, the owner or person in charge of the vehicle would 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 caused serious impairment of a body function of another person, the offense would be 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.

The bills generally would retain the current penalty for an OWI first offense, but would increase the penalty for a violation within 10 years of two or more prior convictions. Currently, the offender may be sentenced to pay a fine of at least \$200 but not more than \$500 and to either community service

for 10 to 90 days plus imprisonment for up to one year; or imprisonment for up to one year plus community service for up to 90 days. Under the bills, the fine would have to be at least \$500 but not more than \$5,000 and the person could be sentenced to imprisonment under the jurisdiction of the Department of Corrections for not less than one year or more than five years; or probation with imprisonment in the county jail for at least 30 days but not more than one year. If probation with jail were ordered, at least 48 hours of the imprisonment would have to be served consecutively.

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 (referred to in this summary as "commercial vehicle drunk driving"). The bills would retain the current penalties for a first offense or an offense with one prior conviction within 10 years. If a person committed commercial vehicle drunk driving within 10 years of two or more prior convictions, he or she would be guilty of a felony punishable as described above for OWI within 10 years of two or more prior convictions.

As used in these provisions, "prior conviction" would include a prior drunk driving violation or negligent homicide, manslaughter, or murder resulting from the operation of a vehicle.

Ignition Interlock Devices

Under the Code, if a person is convicted of a drunk driving offense, the court may order the Secretary of State to issue a restricted license during a period of suspension. The court also may order that the restricted license include a requirement that the person not operate a motor vehicle unless it is equipped with a functioning ignition interlock device, which must render the vehicle inoperable if the device detects an alcohol content of 0.02 gram or more per 210 liters of breath.

Under House Bill 4210 (H-7), until June 30, 2003, if the court or a hearing officer ordered the issuance of a restricted license to a person who intended to operate a vehicle owned by his or her employer, the court or hearing officer would have to notify the employer of the employee's license restriction that required an ignition interlock device. The employer would not be required to install such a device on the employer's vehicle. These provisions would not apply to a vehicle that was

operated by a self-employed individual who used it for both business and personal use.

Until June 30, 2003, if the court or a hearing officer ordered the installation of an ignition interlock device, the restricted license would have to include the installation of a functioning device that met or exceeded the model specifications of the National Highway Traffic Safety Administration on each motor vehicle the person owned or intended to operate. The person whose license was restricted would have to bear the costs of installation. The device would have to be set to render the vehicle incapable of being started if the device detected an alcohol content of 0.02 gram or more per 210 liters of breath. The device also would have to be set to take samples periodically while the vehicle was in operation and to do both of the following:

- Emit a warning signal when the device detected an alcohol content of 0.02 gram or more per 210 liters of breath.
- Render the vehicle inoperable as soon as it was no longer being operated, if the device detected an alcohol content of 0.04 gram or more per 210 liters of breath.

The court or hearing officer also would have to condition issuance of a restricted license upon verification by the Secretary of State that an ignition interlock device had been installed; require periodic monitoring of an installed device by the manufacturer or installer; and require that, if monitoring indicated that the device had been circumvented, that fact be immediately communicated to the court or the hearing officer.

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. To be included on the 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 the operator's breath alcohol level exceeds the specified limit. Under the bill, until June 30, 2003, a manufacturer also would have to file copies of a bond and evidence of insurance (as described below). In addition, until that date, a manufacturer would have 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; 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 would have to pay a maintenance fee to the installer of not more than \$1 per day.

The following provisions concerning liability, insurance, service, and installation would apply until December 31, 2002.

The bill provides that the State, the Department, and its officers, employees, and agents would not be liable in any claim or action that could arise directly or indirectly, out of any act or omission by a manufacturer, installer, or servicing agent of an ignition interlock device that resulted in damage to persons or property.

The bill would prohibit a person from selling, leasing, installing, or monitoring an ignition interlock device unless the manufacturer and provider carried 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 would have to be in an amount of at least \$1 million per incident.

The bill would require an ignition interlock device to be serviced at least every 67 days. Service would have to 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. The installer would have to report within 48 hours to the appropriate court personnel or to the Secretary of State if the vehicle and device were not serviced as required or if the data contained in the device's memory indicated noncompliance with the parameters set in the restricted license. Only authorized employees of the manufacturer or the Department could observe the installation of a device, and reasonable security measures would have to be taken to prevent the customer from observing the installation or obtaining access to installation materials.

The bill would prohibit a person from selling, leasing, or installing an ignition interlock device unless its manufacturer had obtained an executed bond or a renewal certificate for that bond. The bond would have to 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. The

surety would have to make indemnification only after a court had entered final judgment against the manufacturer or its employee or agent. These provisions would apply until June 30, 2003.

The bill would require the Secretary of State to enter into a contract with the University of Michigan Transportation Research Institute for it to evaluate the effect of the amendments addressing driving on a restricted license with an ignition interlock device. The Institute would have to report its findings to the Governor and the Legislature by June 30, 2003.

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 bill would require the accident report form to include, when applicable, whether an ignition interlock device was installed in a vehicle involved in an accident. This would apply until June 30, 2003.

Other Provisions

Additional Two-Week Suspension. The Secretary of State would have to impose an additional 14-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 motor vehicle or a moving violation of the Code or a substantially corresponding local ordinance while the person's driver's license was expired for at least 60 days or indefinitely suspended, or if the person's license application had been denied.

Registration or Title Denial. The Secretary of State could not issue a registration or a certificate of title if the owner's or lessee's driver's license were suspended, revoked, or denied at the time of the application for a violation of the Code or the owner or lessee had never been licensed by this State after his or her license was suspended, revoked, or denied for a second or subsequent drunk driving or driving-without-a-license offense. This provision would take effect January 1, 2000.

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

- 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 would include in these provisions a combination within seven years of one conviction for OUIL, OWI, or OUIL/OWI causing death or serious impairment and one conviction for operation by a minor with any alcohol content. Also, for the combinations of offenses within seven or 10 years, the bills would include commercial vehicle drunk driving and negligent homicide, manslaughter, or murder resulting from the operation of a vehicle.

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. The bills provide that for a denial based on prima facie evidence, a person could rebut the presumption resulting from prima facie evidence by clear and convincing evidence.

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 would include commercial vehicle drunk driving in the two- and three-conviction combinations. The combinations also could include one conviction for operation by a minor with any alcohol content plus one or two of the other offenses.

Rehabilitation. Under the Code, before imposing sentence for a drunk driving conviction, 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 had one or more prior convictions, the court would have to order the person to participate in and successfully complete one or more rehabilitative programs.

Failure to Comply. The bills would prohibit the Secretary of State from issuing a license to a person who had failed to answer a citation or notice to appear in court or for any matter pending or failed to comply with an order or judgment of the court, including paying all fines, costs, fees, and

assessments, until the person answered the citation or notice to appear or complied with the order or judgment.

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 would refer to the fee as a "driver license clearance fee" and require that it be paid for each failure to answer a citation or to pay a fine or cost.

A \$25 license reinstatement fee also is required for 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 would refer to a "clearance fee".

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 would have to be transmitted to the Secretary of State.

- MCL 204a et al. (H.B. 4210)
- 257.8a et al. (H.B. 4576)
- 257.303 et al. (H.B. 4959)
- 257.219 et al. (H.B. 4960)
- 257.904 (H.B. 4961)
- 257.625n & 257.904 (H.B. 5122)
- 257.625n & 257.904 (H.B. 5123)
- 257.319 & 257.319b (H.B. 5951)
- 257.321a et al. (H.B. 5952)
- 750.367c et al. (H.B. 5953)
- 436.1703 (H.B. 5955)
- 257.625 et al. (H.B. 5956)

Legislative Analyst: S. Lowe

FISCAL IMPACT

Department of State

Currently, there are no data to indicate how many people would fall under the provisions of these bills. Therefore, the fiscal impact of these provisions is indeterminate. There would be an increase in costs to the Department of State for additional computer requirements to implement the bills. Further, the Department of State could incur

some costs due to some shifts in enforcement responsibilities.

House Bill 4210 (H-7) would result in an increase in costs to the Department of State to contract with the University of Michigan Transportation Institute. At this time, the cost of the contract cannot be determined.

Corrections

Substance Abuse Services. House Bill 4576 (H-3) could potentially increase costs for the Department of Corrections (DOC). 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 under contract to the DOC. Based on the results of the assessment, the offender is provided with a list of treatment providers also under contract to the DOC. As part of that special condition, the judge may require the offender to reimburse the DOC for the services. In certain circumstances, such as when the offender has private insurance, the offender may pay for services directly.

Given this pattern of the DOC's contracting for services and being reimbursed by offenders, and given that the bill would require a person with one or more prior convictions to participate in and successfully complete one or more appropriate rehabilitative programs at the offender's own expense, costs for substance abuse treatment funded through the DOC budget and the costs of reimbursement collection could increase. There are no data to indicate the number of offenders who would be required to seek treatment or the number who would have to reimburse the DOC for contracted services. 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.

Operating Without a License. House Bills 5122 (H-1) and 5123 (H-1) would have an indeterminate fiscal impact on State and local government.

According to the DOC criminal court disposition report, in 1996, four offenders were convicted of operating a vehicle without a licence. Of the four convictions, 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 were sentenced to prison.

Assuming that two convictions a year resulted in prison commitment for operating a vehicle on a suspended or revoked license resulting in an accident causing serious impairment of body function, and therefore, would be subject to the proposed penalty of five years in prison and/or a fine of \$1,000, and assuming that an offender would serve about 3.3 years in a State prison, prison costs, on average, would increase by \$118,800 annually to incarcerate offenders convicted of this offense.

Assuming that two convictions a year resulted in prison commitment for operating a vehicle on a suspended or revoked license resulting in an accident causing death, and therefore, would be subject to the proposed penalty of 15 years in prison and/or a fine of \$5,000, and assuming that an offender would serve about 9.9 years in a State prison, prison costs, on average, would increase by \$356,400 annually to incarcerate offenders convicted of this offense.

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

Immobilization Device. House Bill 5952 (H-2) would have an indeterminate fiscal impact on local government. There are no data currently available that would indicate how many people might be convicted of the misdemeanor created in this bill concerning vehicle immobilization. However, local government could incur costs for incarceration and/or receive additional fine revenue based on the penalty prescribed in the proposed legislation.

Operating While Intoxicated. House Bill 5956 (H-1) would have an indeterminate fiscal impact on State and local government. The bill would establish penalties for the owner of a vehicle, when that person permitted the vehicle to be driven by someone the owner knew to be intoxicated and the result was 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

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convicted were allowed to operate the vehicle owned or controlled by another person. The State would incur costs for incarceration and/or receive additional fine revenue.

Additionally, the bill would create a felony for two or more violations within 10 years of operating a vehicle while intoxicated. There are no data available to indicate how many people would be subject to this enhanced penalty.

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