

Senate Fiscal Agency
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SFA



BILL ANALYSIS

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Senate Bill 675 (Substitute S-1 as reported)
House Bill 4813 (Substitute S-2 as reported)
House Bill 4924 (Substitute S-1 as reported)
House Bill 4925 (Substitute S-1 as reported)
Sponsor: Senator William Van Regenmorter (Senate Bill 675)
Representative Ruth Johnson (House Bills 4813, 4924, & 4925)
Senate Committee: Judiciary
House Committee: Criminal Justice (House Bills 4813, 4924, & 4925)

Date Completed: 10-10-01

RATIONALE

Various State laws prohibit and provide penalties for the careless, negligent, or reckless operation of a motor vehicle. Under Public Act 214 of 1931, it is a felony to drive a vehicle on a highway carelessly and heedlessly in willful and wanton disregard of the rights or safety of others, or without due caution and circumspection, and at a speed or in a manner that endangers other persons or property and thereby results in a crippling injury to another person. The penalty for felonious driving under Public Act 214 is up to two years' imprisonment, a maximum fine of \$1,000, or both, plus a mandatory one-year suspension of the violator's driver's license. An unforeseen consequence of this law recently was realized when a high school student was severely injured in a driving incident in her school parking lot in Holly, Michigan.

The Holly case appeared to be one that would fit the charge of felonious driving, because of the nature of the driver's actions and the injuries to the young woman. Since the incident occurred in a parking lot and not on a roadway, however, the driver could not be charged with felonious driving, which specifically refers to the operation of a vehicle on a highway. The driver was charged with the lesser offense of reckless driving, a misdemeanor, which does apply to actions in a parking area. Some people believe that the felonious driving offense should be extended to include actions not only on the road, but also in areas generally open to vehicles, including parking lots. In addition, the felonious driving statute is a short statute that

is compiled separately from other driving violations, which generally are in the Michigan Vehicle Code. It has been suggested that this driving violation should be incorporated into the Vehicle Code.

CONTENT

Senate Bill 675 (S-1) would amend the Code of Criminal Procedure to change the sentencing guidelines category for felonious driving, and move its location within the guidelines to reflect revisions proposed by House Bill 4813 (S-2).

House Bill 4813 (S-2) would amend the Michigan Vehicle Code to repeal Public Act 214 of 1931, and re-enact revised felonious driving provisions within the Michigan Vehicle Code.

House Bills 4924 (S-1) and 4925 (S-1) would amend, respectively, the Insurance Code and the Natural Resources and Environmental Protection Act (NREPA) to refer to felonious driving under the Vehicle Code, as proposed by House Bill 4813 (S-2), rather than under Public Act 214 of 1931. House Bill 4925 (S-1) also would specify or revise the periods for which the Secretary of State must order a person not to operate a snowmobile for certain violations.

The bills would take effect on January 1, 2002. Senate Bill 675 (S-1) and House Bills 4924 (S-1) and 4925 (S-1) are tie-barred to House Bill 4813.

Senate Bill 675 (S-1)

Currently, felonious driving is a Class G felony against public safety, with a statutory maximum sentence of two years' imprisonment pursuant to Public Act 214 of 1931. Under the bill, felonious driving would be a Class G felony against a person, with a statutory maximum sentence of two years' imprisonment pursuant to the Michigan Vehicle Code, as proposed by House Bill 4813 (S-2).

House Bill 4813 (S-2)

Under the bill, a person would be guilty of felonious driving under the Michigan Vehicle Code if he or she operated a vehicle upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, carelessly and heedlessly in willful and wanton disregard of the rights or safety of others, or without due caution and circumspection and at a speed or in a manner that endangered or was likely to endanger any person or property resulting in a "serious impairment of a body function" of a person, but did not cause death. The violation would be punishable by up to two years' imprisonment, a maximum fine of \$2,000, or both. ("Serious impairment of a body function" would include, but would not be limited to, loss of a limb or the use of a limb; loss of a foot, hand, finger, or thumb or the use of a foot, hand, finger, or thumb; loss of an eye or ear or the use of an eye or ear; loss or substantial impairment of a bodily function; serious visible disfigurement; a comatose state that lasted for more than three days; measurable brain or mental impairment; a skull fracture or other serious bone fracture; subdural hemorrhage or subdural hematoma; or loss of an organ.)

Also, the Secretary of State would have to suspend a person's driver's license for one year for a felonious driving violation.

The bill would repeal Public Act 214 of 1931 (MCL 752.191 & 752.192).

House Bill 4924 (S-1)

The Insurance Code's definition of "eligible person" for automobile insurance excludes, among others, a person who, during the immediately preceding three-year period, has been convicted of, or who has been subject to a juvenile court disposition for, felonious driving under Public Act 214 of 1931. The bill would refer, instead, to a person who was convicted of or had been subject to a juvenile court disposition for felonious driving under the Michigan Vehicle Code, as proposed by House Bill 4813 (S-2).

House Bill 4925 (S-1)

Under the NREPA, if a court has not ordered a person not to operate a snowmobile for certain violations, the Secretary of State must issue such an order. One of the violations listed in that provision is felonious driving under Public Act 214 of 1931. The bill would refer instead to felonious driving under the Michigan Vehicle Code, as proposed by House Bill 4813 (S-2). Also, the NREPA does not specify the applicable period of a Secretary of State order not to operate a snowmobile for a conviction of felonious driving or of negligent homicide, auto theft, or unauthorized use of a vehicle but without intent to steal it (MCL 750.324, 750.413, & 750.414). Under the bill, an order not to operate a snowmobile for any of those violations would have to be for one year.

In addition, the NREPA requires the Secretary of State to issue an order not to operate a snowmobile for not less than 90 days or more than one year upon receiving a record of a person's conviction of operating a snowmobile while impaired by alcohol and/or a controlled substance. Under the bill, that order would have to be for 90 days. The NREPA also requires the Secretary of State to issue an order not to operate a snowmobile for not less than six months or more than two years if a person has any of several combinations of convictions for operating a snowmobile while under the influence, or impaired. Under the bill, that order would have to be for six months.

MCL 777.12 & 777.17 (S.B. 675)
257.319 et al. (H.B. 4813)
500.2103 (H.B. 4924)
324.82147 (H.B. 4925)

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

Currently, a person who drives a car in a parking lot in a reckless manner and severely injures another person can be charged with the misdemeanor of reckless driving but cannot be charged with felonious driving under Public Act 214 of 1931. That charge can be brought against a driver only if the violation occurs on a highway. This was revealed recently by the incident in Holly. Reportedly, after returning from a sportsmanship banquet for student athletes, as part of a prank, one high school student drove his pickup truck backward in the school parking lot and failed to see another student standing beside her car. The pickup hit the girl and the car, pinning her between the bumper of the truck and the side of her car. The young woman sustained crushing injuries to both legs and required multiple surgeries.

The failure of Public Act 214 to apply to driving violations in a parking lot actually appears to be an oversight, because the lesser charges of careless driving (a civil infraction) and reckless driving (a misdemeanor) both apply to incidents on roads and places generally open to vehicles, including parking lots. Michigan's drunk driving laws also apply in parking areas. House Bill 4813 (S-2) would bring the felonious driving prohibition into conformity with those other driving laws by applying that offense to incidents that occurred in parking lots and other places open to the general public or generally accessible to motor vehicles.

In addition, several driving laws that involve serious injury to a victim, including the drunk driving laws, refer to "serious impairment of a body function" rather than a crippling injury or serious injury. Serious impairment is specifically defined in those provisions with respect to the nature of the injury. The bill would make the felonious driving provision consistent with other driving laws by referring to serious impairment rather than a crippling injury, which is not a defined term.

Response: The careless driving and reckless driving provisions of the Vehicle Code refer to the operation of a vehicle "upon...a frozen lake, stream or pond" in addition to

driving on a highway or other place open to the general public, including an area designated for parking. Perhaps the bill should cover those locations as well.

Supporting Argument

Public Act 214 of 1931, the felonious driving statute, predates the Michigan Vehicle Code and has never been incorporated into it. Public Act 214 is a small statute, encompassing just two sections of the Michigan Compiled Laws, and may be overlooked when driving violations in the Vehicle Code are reviewed by the Legislature. By repealing Public Act 214 and re-enacting the felonious driving provision within the Michigan Vehicle Code, House Bill 4813 (S-2) would make Michigan's traffic laws more streamlined and efficient.

Opposing Argument

Parking lots typically are private property. Extending the felonious driving violation to incidents occurring in parking lots could be viewed as governmental infringement on personal privacy rights.

Response: Whether a criminal action occurs on public or private property is irrelevant. A person is not exempt from criminal laws against assault, for instance, just because the person commits the crime in his or her own home. The problem with the current felonious driving violation is that it specifically applies only to actions on a highway. Other driving laws, including the drunk driving prohibitions, do include activity in parking lots, though, so there is precedent for extending the felonious driving statute to violations that occur on private property.

Legislative Analyst: P. Affholter

FISCAL IMPACT

Corrections. Senate Bill 675 (S-1) and House Bills 4813 (S-2), 4924 (S-1), and 4925 (S-1) would have an indeterminate fiscal impact on State and local government. According to the annual statistical report from the Department of Corrections, in 1999, there were 29 convictions for felonious driving. There are no data to indicate how many more offenders would be convicted of felonious driving if the prohibition were expanded to include reckless driving in a place open to the general public or generally accessible to motor vehicles (pursuant to House Bill 4813).

Under the bills, felonious driving would continue to be a Class G felony, which has a minimum sentence range of 0-3 months to 7-23 months. In most cases, offenders convicted of the Class G felony are subject to probation or incarceration in a local facility, because felonious driving has a maximum penalty of two years. The State incurs the cost of felony probation, estimated at \$4.23 per day, while local units incur the cost of incarceration, which varies between \$27 and \$62 per day. In the absence of data, if one assumed that five more offenders a year would be convicted of felonious driving and receive the longest minimum sentence, given that the annual average cost of incarceration is \$22,000, the additional annual cost to the State would be \$1.0 million.

Senate Bill 675 (S-1) could result in increased costs to the extent that offenders could receive a longer sentence within the given range because felonious driving would be an offense against a person rather than an offense against public safety.

State. These bills would likely increase the number of convictions for felonious driving, and thus the number of driver license suspensions. The reinstatement fee for a driver license is \$125 and benefits the Department of State and various drunk driving-related funds.

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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.