Senate Bill 795: Spending Money to Give Repeat Drunk Drivers Their License Back Early:

[Newly introduced SB 795 (HB 5274) is similar to HB 4921 and HB 4336, which failed to pass into law previously. The following is based upon information and belief. Please see the Text of and Legislative Analysis of SB 795 (HB 5274) for verification and proposed changes to MCL 257.303(5).]

NEGATIVE FISCAL IMPACT: As noted in the House Legislative Analysis Section information, the proposed changes to the law will "increase administrative costs for the local courts" and may also increase costs for Secretary of State. While this bill may well be of enormous benefit to alcohol interlock companies, the cost to Michigan makes this bill financially unsound.

OVERVIEW

- **Currently, a person who has been repeatedly convicted of drunk driving must generally wait a year and attend a hearing to prove their alcohol problem is under control to get a restricted license with an alcohol interlock device.**
- **SB 795 would automatically give a repeat drunk driving offender this privilege after just 45 days, no matter how many convictions for drunk driving the person has and even if they are not committed to sobriety (and may well even be intoxicated) when they receive their privileges. No above referenced hearing would be required to get the restricted license.**

IMPORTANT POINTS RE: SB 795

Eliminating the initial hearing is wrong and temporary court enforced treatment is not a workable substitute:

The requirement for a hearing to show that the "alcohol problem is under control" before any privileges are given (like current law requires) is important.

The current procedure demands the repeat offender at least submit testimonial letters from people who know him/her, verifying their abstinence, a current Substance Abuse Evaluation with favorable results and typically some form of treatment proof. The very nature of the process can encourage family, friends, coworkers and even the offenders themselves to recognize the problem and can promote a real commitment to quit. Numerous petitioners in license restoration cases have confessed they didn't take their problem seriously until their license was revoked and they had to rely on family and friends to drive them around. Pressure to quit drinking came from within their own social group.

Temporary court enforced treatment via "sobriety court" is often attended merely to avoid probation violations and incarceration. Once that threat ends and the person is no longer under the oversight and control of the court, their "sobriety" may be short lived. An interlock machine cannot be a substitute for an experienced Hearing Officer's review of the offender to determine that their alcohol problem is under control and likely to remain under control. A lifelong commitment to sobriety is the only true way to prevent repeat offenders from relapsing – an interlock machine cannot do this.

To eliminate the initial hearing (i.e. before repeat OWI offenders can get a restricted license with an interlock device) is to promote their continued drinking and eventual drunk driving. At some point, even if they wait until the interlock device is off, the offender with no long term sobriety can easily find themselves again at the bar, having had a few drinks, thinking they are ok to drive.
Finally, a fair question: Why should any driving privileges be given to a repeat offender who can't show their alcohol problem is under control?

SB 795 is Unfair:
It is important to note that SB 795 gives no relief to people revoked, suspended or ineligible for other reasons (e.g.):

* Revocations for points (e.g. too many speeding tickets) or for two "reckless drivings" in a seven year period would still be a year minimum, even if the person installs a GPS device to monitor their driving and report violations (e.g. an air/IQ system.
* One or two year suspensions for a first or second breathalyzer refusal (respectively), even if the person has never been convicted of drunk driving, would remain the same.
* No change would be made in the three year wait/ineligibility period to get a license for an unlicensed person who has merely acquired two prior moving violations. (incredibly in this case, SB 795 would make the SOS penalties for a situation involving two speeding tickets about 25 times harsher than repeat drunk driving).

The only people who would enjoy the benefit of SB 795 are the habitual, repeat drunk drivers. No one else would get any breaks, no matter how much they need a license.

SB 795 is Dangerous:
Currently, if a previously revoked person who has been granted a restricted license with an interlock device drinks (and especially drinks and tries to drive), they could be re-revoked for another year. Under SB 795, that same person could repeatedly try - and even succeed in driving drunk – and this new law might never revoke their license for more than 45 days.
Someone with 10, 20, 100 or any number of OWI convictions could drive under the new law in just 45 days.
Many drinkers with an interlock device in their car will simply drive that car to work – and another car to the bar (people often have access to more than one vehicle).
People can also start the car sober, allow it to continue running while they become intoxicated, then drive away drunk. The device will not shut down a running engine.
The same person can then remove the device which registered a positive alcohol reading and claim it was stolen. They can also destroy the unit and claim it was vandalized.
Many problem drinkers also use drugs. Since most drug use is not detected by interlock devices, they allow many types of intoxicated driving, without the risk of detection.

Interlock devices are often unreliable.
Alcohol interlock devices often register false positives and, like any machine, can be tampered with. Countless testimonials have been given re: the extreme problems associated with these devices. One such claim involved the person not being able start the car to drive his young child to the hospital because the interior of the vehicle was hot. The device had been sitting in a parked car with the windows rolled up in July.

A person who has been drinking might claim the reading was due to mouthwash, medicines (such as Primatene Mist, cough syrups and many others), sourdough bread, sugarless gum, certain foods, gas, oil and/or exhaust fumes, windshield wash vapors or even cigarettes, fragrances or lotions, etc. There may be no sure way to know exactly what caused the result as a person's blood alcohol level can disappear fairly quickly, leaving no more evidence of use.
The devices can be tricked: Someone can have a friend blow into the machine or theoretically use cartridge carbon dioxide.

Common Arguments in Favor of SB 795 are flawed:
Arguments have been made about the "need" for repeat drunk driving offenders to obtain driving privileges to get to work or for probation requirements. However, the law typically doesn't view someone's "need to get to work" as a reason not to put them in jail. So why use it as an argument to give someone a license back when they haven't shown their alcohol problem is under control? At least the "revoked" person can still take the bus, a taxi or get a friend to drive them places. The incarcerated person can't even do that. Further, the whole idea behind revoking them was to protect the public, not to make it easier for them to drive to work or probation.
Another commonly given argument for SB 795 is to "ensure that when people revoked for repeat drunk driving drive anyway, they at least won't be intoxicated". Aside from many valid concerns about the reliability of interlock devices in accomplishing that goal (stated above), it appears the vast majority of Driving While License Revoked charges do not involve alcohol anyway. Many are simply people illegally driving around, but sober. So why discard the existing system and enact such an overly broad, harmful law in an attempt to attack what is probably an extremely small percentage of actual "drunk and revoked driving" cases in the first place? A better idea would be to simply increase the penalties for those specific types of offenses.
It is often argued that SB 795 is acceptable because "revoked drunk drivers continue to drive illegally anyway". This is obviously not a reason to give them a license. We don't legalize theft because some people still steal. Further, if an idea behind the law is that we "can't stop people from driving" by revoking them, how can we possibly monitor them to make sure they are only driving to work, per the restricted license they just received?
Arguments by SB 795 supporters that OWI fatalities have, for some unknown reason, increased in recent years is not a reason to implement this bill: 1) the poor economy could be a factor in more alcohol use generally; 2) police department budget cuts might be lessening the enforcement of OWI laws, allowing more drunk drivers to evade arrest; and 3) no evidence has shown that SB 795 will solve the problem.

SB 795 is not necessary. Good alternatives exist:
If we are to begin the process of putting problem drivers back on the road with a restricted license for the purposes of their "getting to work", should we not first give priority to the least severe offenders instead of repeat drunk drivers? Possible examples of legislation in furtherance of this goal could include any of the following:

a. Restricting (for work, etc.), not suspending a license for merely unpaid tickets;
b. Permitting judges to take traffic tickets "under advisement" again, so a person has more of an opportunity to avoid a suspension for points;

c. Eliminating non-removable one and (especially) five year "additional 904 revocations", especially for non-alcohol/drug related moving violations;
d. Giving more flexibility in certain cases on "medical" or "disability" suspensions, for which the person has never actually done anything wrong;
e. Permitting Circuit Court "Hardship" Appeals for a large number of suspensions and revocations currently unavailable for people; or
f. Permitting people suspended for two years after a second Implied Consent Suspension to appeal to Circuit Court for a restricted license.

Even if (for whatever reason) the goal has to be assisting only the repeat drunk driving offenders, an example of possible legislation in furtherance of this goal could include changing the current version of MCL 257.303(2)(c) to make it more equitable. Currently, someone who has received two OWI convictions in a full seven years is revoked for exactly the same period of time (before becoming eligible for review at a hearing) as someone who has received two OWI convictions in one year. An alternative:
2 OWI convictions within 1 year = 1 year minimum revocation (before eligibility);
2 OWI convictions within 2 years = 10 month minimum revocation (""")
2 OWI convictions within 3 years = 8 month minimum revocation (""")
2 OWI convictions within 4 years = 6 month minimum revocation (""")
2 OWI convictions within 5 years = 4 month minimum revocation (""")
2 OWI convictions within 6 or 7 years = 2 month minimum revocation (""")
DLAD/DAAD "Reinstatement" Hearings could remain completely in tact. Many people who actually stop drinking on the date of their second offense will still have a year or more of sobriety (a goal of most hearings) by the time they appear before a SOS hearing officer. Generally, even in OWI cases that don't actually go to trial, a lot of time typically passes from arrest, to actual conviction, to SOS imposing the revocation, to the person preparing and sending in a petition, to their getting a hearing date. Revocations only begin about a month after the conviction, not on the date of the arrest.
Sometimes, concerns have been raised about those who try to get their license back at a hearing but fail. What are the reasons? The person may still be drinking or using drugs or they may not have provided any evidence to show their problem was under control. Whatever the issue, anyone can appeal their denial if they feel it was unfair.
Immediate re-eligibility could also be granted more often by DLAD/DAAD to those who have shown they are truly committed to sobriety, but have simply failed to provide enough or proper documentation.
In conclusion, changing the laws to allow more people back on the road to get to work can be done without such a serious risk to public safety.

Please speak out against SB 795 before it becomes law.
Michael Granzeier is an attorney who has handled many different types of cases, including numerous types of driver's license restoration matters. Because of his work, some might look at his opinion on SB 795 as biased. However, his extensive experience in this area also gives him a very unique understanding and perspective re: this bill and its potential negative impact on Michigan.
Please direct any questions to:
Michael Granzeier 2630 Biddle Ave., Wyandotte, MI 48192 734-285-9920