

MICHIGAN VEHICLE CODE REVISIONS

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Senate Bill 809 (Substitute H-1)

Sponsor: Sen. Tonya Schuitmaker

House Committee: Judiciary

Senate Committee: Judiciary

Complete to 9-25-12

A SUMMARY OF SENATE BILL 809 AS REPORTED BY HOUSE COMMITTEE

The bill would amend the Michigan Vehicle Code to:

- Revise provisions pertaining to restricted licenses issued to participants of a DWI/sobriety court program who use an ignition interlock device.
- Increase the mandatory license suspension for certain violations, including drunk driving, by 45 days.
- Prohibit operators of commercial vehicles from using a handheld mobile telephone while on a highway (even if stationary).
- Revise provisions regarding the lawful transportation and possession in a vehicle of alcohol in an open container.
- Eliminate notification of a suspended or revoked driver license as an element of the crime of driving with a suspended or revoked license.

The bill would amend numerous provisions within the Michigan Vehicle Code (MCL 257.212 et al.) as described below.

Reinstatement of revoked license

Certain conditions must be met before the SOS can issue a new license to a person whose license has been revoked or revoked-and-denied for certain violations involving operation of a motor vehicle (including certain drunk driving violations). One condition prohibits the SOS from issuing a new license until at least one year after the person's license had been revoked or denied (and until at least five years for a subsequent revocation within seven years). The bill would increase the one-year period to one year and 45 days.

Restricted license with use of ignition interlock device

The bill would expand the locations to which a person could drive with a restricted driver license that requires installation and use of an ignition interlock device.

Currently, the restricted license only allows the person to drive to and from any combination of home, workplace, school, or court-ordered alcohol or drug education or treatment program. Instead, the bill would permit the person to drive to and from any combination of the following locations or events:

- In the course of the person's employment or occupation if the employment or occupation does not require a commercial driver license.
- To and from any combination of the person's residence; work location; alcohol, drug, or mental health education and treatment as ordered by the court; alcoholics anonymous, narcotics anonymous, or other court-ordered self-help program; court hearings and probation appointments; court-ordered community service; educational institution at which the person is enrolled as a student; a place of regularly occurring medical treatment for a serious condition or medical emergency for the person or a member of the person's household or immediate family; alcohol or drug testing as ordered by the court; or ignition interlock service provider as required.

While driving with a restricted license, the person would have to carry proof of destination and the hours of any employment, class, or other reason for traveling and display that proof to a peace officer upon request.

Currently, the code specifies that a hearing officer may not order an unrestricted license until the court notifies the SOS that the person has successfully completed the DWI/sobriety court program *or* the minimum period of license sanction that would have been imposed under Sections 303 or 319 (had not a restricted license requiring an ignition interlock device been issued) had been completed, whichever event occurred later. The bill would add two more conditions that would have to be completed before a hearing officer could issue an unrestricted license: (1) that the person demonstrated that he or she had operated with an ignition interlock device for not less than one year; or (2) the person satisfied the requirements of Section 303 and R 257.313 of the Michigan Administrative Code (which includes proof of abstinence from alcohol).

The successful completion of the DWI/sobriety court program and a certificate from the DWI/sobriety court judge would be considered positive evidence of the petitioner's abstinence during participation in the program. "Certificate" would include, but not be limited to, a statement that the participant had maintained a period of abstinence from alcohol for not less than six months at the time of program completion.

If a person's restricted license was conditioned on installation and use of an ignition interlock device, the issuance of an unrestricted license would be postponed for a period of three months for each act that would be a minor violation. In addition, the restricted license would be suspended, revoked, or denied if the person committed any other act that would be a major violation. "Minor violation" and "major violation" would mean those terms as defined in R 257.301a of the Michigan Administrative Code.

Further, the bill would amend Section 304(3)(i) to allow a person to be eligible for a restricted license with the use of an interlock ignition device if ineligibility for a license is based on refusing to submit to a chemical test under Section 625d. Currently, the eligibility for a restricted license under this provision [Section 625f(1)(a)] extends only to a person who fails to request a hearing within 14 days of refusing to submit to a chemical test offered by a peace officer and then only if the person had been operating a motor

vehicle other than a commercial motor vehicle. (Presumably, the amendment would allow a person operating a commercial motor vehicle who refused to submit to a chemical test and who failed to request a hearing in the allowable time period to be eligible for a restricted license to operate a vehicle with an ignition interlock device.)

CDL revisions

The bill would make the following revisions to provisions affecting persons licensed to drive commercial vehicles:

- Add to the list of offenses included in the definition of "serious traffic violation" a violation of Section 602b(3). The new section would prohibit, beginning October 28, 2013, the use of a hand-held mobile telephone to conduct a voice communication or to reach for or dial a mobile telephone while operating a commercial motor vehicle on a highway. As used in this prohibition, "mobile telephone" would not include a two-way radio service or citizens band radio service.

The prohibition would also apply while the commercial vehicle was temporarily stationary due to traffic, a traffic control device (e.g., a red light), or other momentary delays. It would not apply if the operator of the commercial vehicle had moved the vehicle to the side of, or off, a highway and had stopped in a location where the vehicle can safely remain stationary.

(Section 20 of the code defines "highway or street" to mean the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.)

- Apply certain mandatory revocations or suspensions to commercial learner permits.
- Allow suspensions or revocations required under Section 319b to run consecutively with any commercial driver license (CDL) action imposed under the section.
- Require suspensions to be given for a violation of commercial motor vehicle fraudulent testing law.
- Delete as a violation requiring revocation for life having a six point violation as provided in Section 320a while operating a commercial motor vehicle.

Transporting open containers of alcohol

Currently, it is illegal to transport or possess alcohol within the passenger compartment of a vehicle in an open container (open, uncapped, or broken seal) upon a highway or in a moving vehicle in any place open to the public, such as parking lots. If the vehicle lacks a trunk or compartment separate from the passenger compartment, an open container may be lawfully transported or possessed if enclosed or encased and not readily accessible to the occupants of the vehicle.

The bill would delete the underlined language above and instead require—when a vehicle lacks a trunk or separate compartment—that the open container be in a locked glove compartment, or behind the last upright seat, or in an area not normally occupied by the operator or a passenger.

The bill would also refer to a passenger "area" rather than a passenger "compartment." "Passenger area" would mean the area designed to seat the operator and passengers of a motor vehicle while it is in operation and any area that is readily accessible to the operator or a passenger while in a seated position, including the glove compartment.

Notification of license status

Currently, the Secretary of State is required to provide notification of certain actions regarding the operation of a vehicle (for example, a notice that the person's driver license has been suspended or revoked). The notice may be made by personal delivery to the person to be notified or by first-class mail. The bill would delete a provision that allows proof of the giving of notice to be made by the certificate of a person at least 18 years of age naming the person to whom notice had been given and specifying the time, place, and manner in which the notice had been given. (Section 212).

In Section 904, the code prohibits a person from operating a motor vehicle whose operator's or chauffeur's license or registration has been suspended or revoked and who has been notified as provided in Section 212 of that suspension or revocation as described above. The bill would delete the underlined language. Thus, the penalties would be triggered if a person drove after his or her license had been suspended or revoked, whether or not a notice had been provided by the SOS. (Penalties for operating a vehicle without a valid license range from a 93-day misdemeanor and/or up to a \$500 fine to a 15-year felony and fine between \$2,500 and \$10,000 for a repeat violation causing the death of another.)

FISCAL IMPACT:

Judiciary

Local courts may face additional costs due to an increase in caseload from processing new tickets for operating hand-held mobile telephones while driving commercial vehicles. Fees associated with these tickets would partially or fully offset these costs. Any additional fine revenue collected would benefit local libraries.

Secretary of State

Senate Bill 809 will have an indeterminate fiscal impact on administrative costs of the Secretary of State. Any cost increases associated with the provisions of the bill would be absorbed under current appropriation levels.

Department of Transportation

The federal government has long provided funds to states for highway programs. Over the last 15 years, federal funds for Michigan highway programs have averaged approximately \$1.0 billion per year — approximately one-third of annual state

transportation budgets. In order to achieve national highway operational or safety objectives, federal law has imposed various requirements on the states as a condition of receiving federal funds. Federal requirements include enforcement of vehicle size and weight limitations, control of junk yards and outdoor advertising, and use of safety belts. Safety related requirements include establishment of national (21-year-old) minimum drinking age, zero tolerance blood alcohol for underage drivers, the .08 blood alcohol standard for driving while intoxicated, restrictions on open containers of alcohol in vehicles, and adoption of federal commercial driver's license standards.

The On July 6, 2012, President Obama signed into law P.L. 112-141, the Moving Ahead for Progress in the 21st Century Act (MAP-21), which reauthorized the federal-aid transportation programs through September 2014. Subtitle D of MAP 21 amended several sections of federal law dealing with highway safety; Sec. 1402 of MAP 21 amended the *Open container requirements* of federal law; Sec. 1403 of MAP 21 amended provisions related to *minimum penalties for repeat offenders for driving while intoxicated or driving under the influence*. Sec. 1404 amended the penalty provisions related to federal compliance standards.

According to a Michigan State Police summary, the Federal Highway Administration now considers Michigan to be out of compliance with new MAP-21 requirements under Section 154 USC (Open Container) and 164 USC (Repeat Offender). The Michigan Department of Transportation (MDOT) indicates that failure to demonstrate compliance with these two standards by October 1, 2012, will result in a penalty of \$21.5 million for each section. The department indicates that the penalty may involve the transfer of these funds from core MAP-21 programs, the National Highway Performance Program, and the Surface Transportation Program, to safety programs under Section 402 USC.

MDOT indicates that Michigan is also out of compliance with federal regulations governing use of hand-held cellular phones by operators of commercial vehicles. The department indicates that failure to demonstrate compliance will cause the reapportionment, i.e. transfer of funds to other states, of 5% of certain MAP-21 core program funds (Surface Transportation Program, Interstate Maintenance Program, and National Highway System Program) in the first year.

BRIEF DISCUSSION OF THE ISSUES:

For:

Reportedly, some of the changes reflected in the bill are necessary to comply with new federal mandates that tie eligibility to federal transportation dollars to compliance. For instance, new federal rules require revisions to Michigan's law regarding the transportation of an open container of alcohol in a vehicle, prohibiting operators of commercial vehicles from using a handheld telephone while on a highway (this includes while stopped in traffic or at a red light), and, if a person's license had been revoked, extending the time period during which a person is generally ineligible for a restricted license. If the legislation conforming Michigan law to the federal rule changes is not in

place by October 1, 2012, it is estimated that the state would lose about \$42 million in federal funding.

The bill also takes advantage of federal changes regarding eligibility and participation in DWI/sobriety courts to expand the locations to which a participant with a restricted license and ignition interlock device is permitted to drive. The changes should increase successful completion of the programs by enabling participants to drive to therapy and AA meetings, get to work or school, and drive to medical appointments.

Against:

Apparently, changes to the notice requirement regarding license suspensions and revocations were proposed in order to conform to the ruling in a recent state Supreme Court case. [*Michigan v Nunley*, Docket No. 144036, (July 12, 2012)]. However, that case centered on the admissibility as evidence of the certification of notice produced by the SOS when it sent a notice that a person's license was suspended or revoked and whether or not the admission of the certification, without accompanying witness testimony, violated the Confrontation Clause of the Michigan and U.S. Constitutions.

Instead, as currently written, the bill would remove an element of the crime of driving with a suspended or revoked license (DWLS). Currently, to commit DWLS, a person must have a license suspended or revoked, have received a notice from the SOS of the suspension or revocation, and then drive a vehicle anyway. Ending the notice requirement appears problematic for several reasons.

Licenses can be suspended or revoked for many reasons, including serious convictions such as drunk driving but also more minor reasons such as accumulating too many points on a driving record. However, even if a person knows that he or she has committed an offense that could trigger a license suspension/revocation, the person may not know the exact date the license would no longer be valid; this information is provided by the SOS notice. By removing receipt of a notice as an element of the crime, many more people could be found in violation of DWLS if they hadn't received the SOS notice at all, or if they didn't receive it before the suspension/revocation went into effect, even though it wasn't their intent to do so.

Further, it is not clear if the deleted language in Section 904 is the only reference in the act requiring SOS to send notification of a suspension/revocation, or one of a few. If so, the bill may inadvertently relieve SOS of any, or some, responsibility to notify a driver that he or she no longer has a valid license.

POSITIONS:

A representative of the Office of Secretary of State testified in support of the bill. (9-19-12)

A representative of the Michigan Department of Transportation testified in support of the bill. (9-19-12)

The Michigan State Police indicated support for the bill. (9-19-12)

The Michigan Restaurant Association indicated support for the bill. (9-19-12)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.