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BILL ANALYSIS

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Senate Bill 809 (as enacted)
Sponsor: Senator Tonya Schuitmaker
Senate Committee: Judiciary
House Committee: Judiciary

PUBLIC ACT 306 of 2012

Date Completed: 7-23-13

CONTENT

The bill amended the Michigan Vehicle Code to do the following:

- Prohibit a Secretary of State (SOS) hearing officer from ordering an unrestricted license for a person who received a restricted license following drunk driving violations, until the person has operated with an ignition interlock device for at least one year and satisfies other statutory and administrative rule requirements, including completion of a DWI/sobriety court program.
- Require the successful completion of a DWI/sobriety court program, and a certificate from the program's judge, to be considered positive evidence of a petitioner's abstinence during participation in the program.
- Require the SOS to postpone considering issuance of an unrestricted license to a person who completed a sobriety court program, for three months for each "minor violation" during an ignition interlock monitoring period.
- Require a restricted license to be suspended, revoked, or denied if the person who was issued the license, with a requirement for an ignition interlock device, commits a "major violation".
- Modify the circumstances under which a person holding a restricted license may drive a motor vehicle.
- Require a person holding a restricted license who is driving a motor vehicle to carry proof of his or her destination and other reasons

for travel, and present that proof upon a peace officer's request.

- Revise the requirements for suspension of vehicle group designations if a person commits certain violations while operating a commercial motor vehicle, and extend the suspension requirements to commercial learners permits.
- Revise the conditions under which an open container of liquor may be transported in a vehicle.

The bill took effect on October 1, 2012.

License Revocation

The SOS must revoke a person's license and deny issuance of a license to a person who commits certain offenses or combinations of offenses, in violation of a State law, local ordinance, law of another state, or law of the United States, that substantially corresponds to a State law.

The SOS may not issue a license to a person whose license has been revoked under the Code until specific events occur. These previously included the later of the expiration of either 1) at least one year after the license was revoked or denied, or 2) at least five years after the date of a later revocation or denial occurring within seven years after any earlier revocation or denial. The bill retained this provision but changed the first time frame from one year to one year and 45 days.

Restricted License

Except as otherwise provided, the Vehicle Code requires the SOS to issue a restricted license to a person whose license was suspended, restricted, revoked, or denied based on multiple convictions for operating a vehicle while intoxicated or while visibly impaired due to the consumption of alcohol and/or a controlled substance. A restricted license is effective until a hearing officer orders an unrestricted license. Previously, a hearing officer could not consider ordering an unrestricted license until the later of the following events:

- The court notified the SOS that the person successfully completed the DWI/sobriety court program.
- The minimum period of license sanction that would have been imposed, but for the requirement of issuing a restricted license, had been completed.

Under the bill, an unrestricted license may not be issued until those events occur, the person satisfies the requirements of Section 303 of the Vehicle Code and R 257.313 of the Michigan Administration Code, and the person demonstrates that he or she has operated with an ignition interlock device for at least one year, whichever is latest. (Section 303 deals with the prohibited issuance, revocation, or denial of a license for various reasons, and lists criteria for the issuance of a license to a person whose license was revoked. Rule 257.313 prescribes standards for the issuance of a license to a person who has been denied a license or whose license has been revoked based on specific grounds.)

The bill requires the successful completion of the DWI/sobriety court program and a certificate from the judge to be considered positive evidence of the petitioner's abstinence while he or she participated in the program. ("Certificate" includes a statement that the participant has maintained a period of abstinence from alcohol for at least six months at the time of program completion.)

Under the Code, after a person completes the DWI/sobriety court program, his or her restricted license must be suspended, revoked, or denied, unless set aside, if any of the following occurs:

- The person operates a motor vehicle without an ignition interlock device that meets criteria specified in the Code.
- The person removes an ignition interlock device from a vehicle he or she owns or operates, or causes it to be removed, unless the SOS has authorized its removal.
- The person is arrested for operating while intoxicated or impaired.

The bill also requires a restricted license to be suspended, revoked, or denied if the person commits any other act that would be a major violation if his or her license had been issued under Section 322(6). "Major violation" means that term as defined under R 257.301a. (That rule defines "major violation" as any of the following during a monitoring period if an ignition interlock device is a requirement of a restricted license:

- A rolling retest violation.
- Issuance of a permit to a person whose license is confiscated for refusing a chemical test of his or her blood, breath, or urine.
- Conviction of an ignition interlock requirement violation.
- Indication that the ignition interlock device has been tampered with or circumvented, or that there was an attempt to do so.
- Three minor violations (as described below).
- Unauthorized removal of an ignition interlock device from a vehicle, unless the device is installed within seven days after removal in any vehicle owned or operated by a person whose license is restricted.
- Operation of any motor vehicle without a properly installed and functioning ignition interlock device.

Section 322(6) pertains to the issuance of a restricted license to a person whose license has been denied or revoked under specified sections of the Code. Those sections involve multiple convictions within seven or 10 years for certain alcohol-related driving violations, or one conviction for another specified offense, including reckless driving or driving with a suspended or revoked license and causing death or serious impairment of a body function, fleeing and eluding, and leaving the scene of an accident. If a restricted license is issued to a person under

Section 322(6), he or she is required to install an ignition interlock device on each vehicle the person owns or intends to operate.)

In addition, the bill requires the SOS, after a person completes the DWI/sobriety court interlock pilot program, to postpone considering the issuance of an unrestricted license for a period of three months for each act that is a minor violation as defined in R 257.301a of the Michigan Administrative Code if the person's license was issued under Section 322(6). (Under that rule, "minor violation" means either of the following during a monitoring period if the ignition interlock device is a requirement of a restricted license:

- Three start-up failures, after the device has been installed for at least two months.
- The person's failure to report to the device manufacturer, installer, or service provider for monitoring within seven days after his or her scheduled service date.)

Driving with a Restricted License

Previously, a person with a restricted license (issued as discussed above) was allowed to operate his or her vehicle only to take driving skills tests as required by the SOS, and to drive to and from any combination of the person's residence, workplace, and school, and a court-ordered alcohol or drug education or treatment program. The bill expanded this list and allows a person to drive to and from any combination of the following specific locations or events.

First, the person may drive in the course of his or her employment or occupation if it does not require a commercial driver license. Second, the person may drive to and from any combination of the following:

- The person's residence.
- The person's work location.
- A court-ordered alcohol, drug, or mental health education and treatment.
- Alcoholics Anonymous, Narcotics Anonymous, or other court-ordered self-help programs.
- Court hearings and probation assignments.
- Court-ordered community service.

- An educational institution where 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 his or her immediate family or household.
- Court-ordered alcohol or drug testing.
- Ignition interlock service provider as required.

The bill requires a person with a restricted license to carry, while driving, proof of his or her destination and the hours of employment, class, or other reason for traveling. The person must display this proof upon a peace officer's request.

Suspension Periods: CMV Violations

Section 319b of the Vehicle Code requires the Secretary of State immediately to suspend or revoke all vehicle group designations on a person's driver license upon receiving notice of certain violations, or receiving a notice that the person has refused to submit to a chemical test of his or her blood, breath, or urine to determine the amount of alcohol and/or the presence of a controlled substance, while the person was operating a commercial motor vehicle (CMV). The bill also requires the SOS immediately to suspend or revoke all commercial learners permits under these circumstances.

A suspension must be for 60 days, 120 days, one year, three years, or life, depending on the violations a person is convicted of or found responsible for. A suspension for 120 days must be served consecutively with a 60-day suspension if the person is convicted of or found responsible for certain violations within 36 months while operating a CMV.

The bill also requires suspensions for 60 days, one year, three years, and life to run consecutively with any commercial driver license action imposed under Section 319b. With regard to the violations that trigger a 60-day or one-year suspension period, the bill includes a violation of commercial motor vehicle fraudulent testing law.

Previously, violations that require a one-year or three-year suspension included a 6-point violation while operating a commercial

motor vehicle. The bill removed that trigger.

Previously, Section 319b also required the SOS immediately to suspend all vehicle group designations on a person's driver license upon receiving notice of certain violations involving the operation of a CMV when the person was ordered out-of-service. The bill instead requires the SOS immediately to suspend or revoke all commercial learners permits or vehicle group designations on a person's license under these circumstances. The bill also requires the period of suspension or revocation, which is 180 days, two years, or three years, depending on the violation, to run consecutively with any commercial driver license action imposed under Section 319b.

Transportation & Possession of Open Alcohol

The Code makes it a misdemeanor to transport or possess an open, uncapped, or unsealed container of alcoholic liquor within a vehicle on a highway, place open to the general public, or place generally accessible to motor vehicles. Previously, this applied within the passenger "compartment" of a vehicle. The bill refers instead to the passenger "area".

Previously, transportation and possession were permissible if a vehicle did not have a trunk or compartment that was separate from the passenger compartment, and the alcoholic liquor container was closed and not readily accessible to the vehicle occupants.

The bill instead allows transportation and possession within the passenger area of a vehicle that does not have a trunk or compartment that is separate from the passenger area, if the container is in a locked glove compartment, behind the last upright seat, or in an area not normally occupied by the operator or a passenger.

The bill defines "passenger area" as 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 his or her seating position, including the glove compartment. "Glove compartment" means a recess with a hinged and locking door in the dashboard of a motor vehicle.

MCL 257.303 et al.

Legislative Analyst: Glenn Steffens

FISCAL IMPACT

According to the Department of State, there will be little to no additional costs related to the implementation of this bill. Any unforeseen costs will be minimal and will be absorbed within the Department's current annual budget.

The bill will have no fiscal impact on local government.

Fiscal Analyst: Joe Carrasco

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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.