



**House
Legislative
Analysis
Section**

Manufacturer's Bank Building, 12th Floor
Lansing, Michigan 48909
Phone: 517/373-6466

DRUNK DRIVING REFORM PACKAGE

House Bill 4942 (Substitute H-1)

Sponsor: Rep. Michael E. Nye

House Bill 4972 (Substitute H-1)

Sponsor: Rep. Perry Bullard

House Bill 5961 (Substitute H-1)

Sponsor: Rep. Debbie Stabenow

House Bill 6055 (Substitute H-1)

Sponsor: Rep. William Van Regenmorter

Senate Bill 95 (Substitute H-1)

Sponsor: Senator Rudy J. Nichols

First Analysis (9-26-90)

Committee: Judiciary

Senate Committee (SB 95): Judiciary

THE APPARENT PROBLEM:

Michigan's laws on drunk driving, contained in the vehicle code, last underwent extensive revision in 1982. Since that time various inconsistencies and shortcomings of the law have been noted. For example, when a person convicted of driving while "impaired" (OWI) has two drinking and driving convictions within the previous ten-year period, the code requires the offender's license to be revoked. However, upon a third offense conviction for driving while under the influence (OUIL), which is more serious than OWI, the code demands revocation only if the prior convictions are both for OUIL offenses. Further, while OUIL arrest figures suggest that the incidence of drunk driving has declined in recent years, as has the traffic death rate, the proportion of fatal accidents in which alcohol was involved has held steady. In other words, alcohol has continued to be involved in roughly half of all fatal traffic accidents in the state (alcohol "involvement" means that someone in the accident, not necessarily a driver, had been drinking). That people continue to drink and drive may to some degree reflect a lingering societal acceptance of such behavior, but it also reflects a well-founded belief that the drinking driver will not be caught. The National Highway Traffic Safety Administration has estimated that on the average a drinking driver can drive drunk about 5,000 miles before being arrested; only about one in a thousand drunk drivers get arrested. Common wisdom has it that to successfully deter drunk driving, there should be swift and sure sanctions. Legislation to enact such sanctions, as well as to correct the shortcomings of the 1982 drunk driving reforms, has been proposed.

THE CONTENT OF THE BILLS:

The bills constitute a package to revise Michigan's law on drunk driving. Each of the bills would amend the Michigan Vehicle Code (MCL 257.8a et al.); none could take effect unless all were enacted. Generally speaking, provisions on new criminal penalties and related licensure actions would take effect April 1, 1991; the remainder of the package

would take effect January 1, 1991. Major components would include the following:

"Reach" of law. Drinking and driving provisions would be extended to apply anywhere "generally accessible to the public." In addition, convictions obtained in other states, as well as under local ordinances, would be considered for repeat offenders.

Criminal offenses, penalties. A first offense drunk driving conviction (OUIL; driving with a blood alcohol content [BAC] of 0.10 percent) would continue to be a misdemeanor punishable with community service, a jail term of up to 90 days, and/or a fine of \$100 to \$500; however, the allowable period of community service would be increased from 12 to 45 days. A person convicted of drunk driving within seven years of a prior drunk driving offense would receive a fine of \$200 to \$1,000, and, at a minimum, would have to either serve 10 to 90 days of community service or spend 48 consecutive hours in jail; a sentence of imprisonment under this provision could not be suspended. An OUIL conviction within ten years of two prior drunk driving offenses would be a felony, as it is now, but the legislation would impose minimum penalties of one to five years' imprisonment and/or a fine of \$500 to \$5,000.

Two new drunk driving offenses would be recognized: drunk driving that caused a fatality, and drunk driving that caused a long-term incapacitating injury. Causing a death would be a felony punishable by up to 15 years in prison and/or a fine of \$2,500 to \$10,000. Causing an incapacitating injury would be a felony punishable by up to five years in prison and/or a maximum fine of \$5,000.

A first-time conviction for driving while impaired (OWI) would be a misdemeanor punishable as it is now, except that the possible term of community service would be increased from 12 to 45 days. An OWI conviction within seven years of any prior drinking and driving conviction would be punished with a fine of \$200 to \$1,000, plus sentenced to either 10 to 90 days of community service or

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OVER

imprisonment for up to one year. These same penalties would apply to an OWI conviction within ten years of any two or more drinking and driving convictions.

For all purposes under the act, a conviction based on a "no contest" plea would be treated in the same manner as a conviction based on a finding or plea of guilty, except that neither the plea nor the conviction would be admissible as substantive evidence of conduct at issue in a civil case arising out of the same occurrence.

Attempted offenses. Conviction for attempted OUIL or OWI would be punished as if the offense had been completed. When assessing points and taking licensing action, the secretary of state and the court would treat an attempted conviction for OUIL or OWI the same as if the offense had been completed.

License sanctions. The package would prescribe a complex schedule of license suspensions based on the offender's history; the court would have to consider all prior convictions entered on the person's Michigan driving record. The suspensions would have to be ordered immediately upon a verdict of guilty, a plea of guilty or a plea of nolo contendere. A first-time OUIL offender would receive a mandatory license suspension, with no possibility of a restricted license, for 30 days. The mandatory suspension period for an OUIL conviction with a recent prior OWI would be 60 days; a prior conviction for OUIL would result in license revocation. License revocation would also be mandated for a conviction for drinking and causing a death, for drinking and causing incapacitating injury, and for a OWI conviction when the person had two or more prior drinking and driving convictions within ten years. The only drinking and driving conviction with which a person could receive a restricted license without first serving a minimum suspension period would be first-time OWI. (A restricted license allows the holder to drive certain places at certain times, such as to and from work.)

The legislation would create a procedure, commonly called "administrative per se," under which the secretary of state would suspend the license of someone found to have a BAC of 0.10 percent or more. The "administrative per se" procedures would be in effect for a three-year test period. If the driver did not request a hearing, the secretary of state would, upon the expiration of 45 days from the date of arrest, suspend the person's license for 30 days. Hearing procedures would be akin to those in effect for test refusal, which would continue to be subject to a six-month suspension. However, under administrative per se, if the related criminal case was dropped or adjudicated prior to the hearing, the secretary of state would cancel the hearing and take no licensing action. The license of a person failing a breathalyzer test would be immediately confiscated by the officer, but provisions would be made for a temporary permit pending the hearing and a temporary restricted license if the court case was still underway at the time a hearing officer found in favor of the state. If the court case was still pending 30 days after the restricted license was issued, the secretary of state would impose a license suspension of 30 days.

Speedy disposition. A person arrested on a misdemeanor OUIL or OWI charge would have to be arraigned within seven days after arrest. A pretrial conference would have to be held within 35 days after arrest. Speedy disposition also would be required when the court was notified that the secretary of state had issued a restricted license under the "administrative per se" procedures.

Judicial review. A person could continue to appeal a license suspension or revocation to the circuit court, but the court would be prohibited from staying a license suspension, revocation or denial if the court's action was based on a claim of undue hardship. When reviewing various drunk driving related license revocations or denials, the court would have to confine its consideration to a review of the record, and could set aside the secretary of state's determination only under certain circumstances, such as if an error of law had been made. The legislation would allow a police officer, with the consent of the local prosecutor, to appeal certain secretary of state determinations to the circuit court.

Breathalyzer refusal. A person's refusal to submit to a breathalyzer or blood test would be admissible in court for the purpose of showing that a test was offered to the defendant, but not as evidence in determining the innocence or guilt of the defendant. The jury would be instructed accordingly.

Communication between authorities. Various provisions would require the court and the secretary of state to promptly notify each other of case dispositions and driving histories.

Points. Six points would be placed on a person's driving record for a conviction for causing a death while OUIL, causing an incapacitating injury while OUIL, or the attempt of either. Two points would be assessed for carrying open intoxicants in a vehicle (the legislation would transfer the prohibition against open intoxicants from the liquor control act to the vehicle code).

License reinstatements. A revoked license could not be reinstated until the later of the following: one year after revocation, or five years after a subsequent revocation occurring within seven years of a prior revocation. Multiple convictions arising from the same incident would be treated as a single violation for this purpose. The license reinstatement fee would be increased from \$60 to \$90, commencing with licenses issued or returned on or after January 1, 1991.

Driving on a suspended license. Penalties for driving under a suspended license (other than for those whose license was suspended for failing to answer a citation) would be revised. A first violation is now a misdemeanor punished with jail for three to 90 days and/or a maximum fine of \$100; under the legislation, the penalty would be up to 90 days in jail and/or a maximum fine of \$500. A second or subsequent violation would be now punished with five days to a year in jail, and/or a fine of up to \$500; under the bill, the penalty would be imprisonment for up to a year and/or a fine of up to \$1,000. (In other words, possible fines would be increased, and minimum jail terms would be eliminated.)

Reports. The secretary of state, circuit court, district court, probate court, and local units of government would be required to cooperate with the state police to provide the information necessary for the annual drunk driving audit. Data on arrests and convictions for causing a death while OUIL and causing incapacitating injury while OUIL would have to be included. Also included in the audit would be a report compiled by the secretary of state on the average period of suspension, length of imprisonment, length of community service, and fine ordered by each judge. The state would contract with the University of Michigan Transportation Research Institute to evaluate the impact of the bills' drunk driving reforms and report its findings to the governor and the legislature by July 1, 1994.

FISCAL IMPLICATIONS:

According to the Department of State, increased administrative costs for the department would be covered by the proposed increase in the license reinstatement fee (from \$60 to \$90). In addition, assuming the state will be able to show that it meets federal standards for prompt license suspensions, the package would enable the state to qualify for about \$9 million in federal grant funds over the next five years. Grant monies would be available for a wide range of drunk driving related treatment and prevention programs. (9-25-90)

ARGUMENTS:

For:

The tragedy of the deaths and injuries caused by drunk drivers is that they are preventable. Unfortunately, too many drinkers are irresponsible drivers who are willing to risk current penalties to get behind the wheel. The proposed legislation will deter those drivers by closing technical loopholes in the law, promising swift and sure punishment for drinking drivers, and hiking penalties for especially troublesome violators such as repeat offenders and those who drive on suspended licenses. It will require courts and state agencies to communicate and cooperate with each other, and will improve the collection and analysis of drunk driving data. With implementation of the legislation, the state should be able to meet federal requirements for some \$9 million in grant money over the next five years; that money could go to treatment and prevention programs that could further reduce the incidence of drunk driving.

Against:

The legislation is open to criticism on a number of points, among them:

- Someone convicted of a first-time impaired driving offense could receive a restricted license. The danger here is that the vast majority of people convicted of impaired driving each year were originally charged with a more serious offense.
- License sanctions could run concurrently with terms of incarceration. A person could be eligible to receive a license as soon as he or she was released from jail or prison.
- The deadlines for court action may be unreasonable. Courts are struggling with crowded dockets and need some flexibility to set priorities.
- The threshold levels of blood alcohol that trigger OUIL and OWI penalties should be lower. Many believe that driving under the influence of alcohol is better reflected by a blood alcohol content of 0.08 percent, rather than Michigan's standard of 0.10 percent.
- Especially severe penalties for causing death or incapacitating injury make little sense if they have no deterrent effect. Obviously, no drinking driver thinks that he or she will cause a fatal accident.
- The legislation focuses on stronger sanctions and closing loopholes, but still falls short of assuring certain punishment. For punishment to be certain and thus a deterrent, a drinking driver must first be caught. Additional resources should be devoted to law enforcement.
- The answer to the drunk driving problem does not lie in harsher criminal sanctions for drinking drivers, but rather in a commitment to adequate treatment programs to which a drinking driver may be sent, and in further reducing societal acceptance of drinking and driving.

POSITIONS:

The Department of State supports the package. (9-25-90)

The Michigan District Judges Association supports the package. (9-25-90)

The Michigan Interfaith Council on Alcohol Problems supports the package. (9-25-90)

The Michigan Sheriffs Association supports the package. (9-25-90)

The Michigan State Medical Society supports the package. (9-25-90)

Mothers Against Drunk Driving supports the package. (9-25-90)

A representative of the Michigan Beer and Wine Wholesalers Association testified in support of the package. (9-25-90)

AAA Michigan submitted written testimony in support of the package. (9-25-90)

The Prosecuting Attorneys Association of Michigan supports the package. (9-25-90)