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DRUNK DRIVING REFORMS

House Bill 4827

Sponsor: Rep. Perry Bullard

House Bill 4828

Sponsor: Rep. Michael E. Nye

Senate Bill 314

Sponsor: Sen. William Van Regenmorter

Senate Bill 315

Sponsor: Sen. Debbie Stabenow

House Committee: Judiciary

Senate Committee: Judiciary

Complete to 5-23-91

A REVISED SUMMARY OF THE BILLS AS INTRODUCED 5-14-91

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 are to take effect unless all are enacted. (Note: The provisions tying the bills together refer to the bills by request numbers that are inconsistent between the House and Senate bills.) Generally speaking, provisions on arrests, prosecutions, criminal penalties and related licensure actions, and court actions would take effect January 1, 1992; the remainder of the package, including provisions on license reinstatements, testing, and suspensions, would take effect October 1, 1991. Major components would include the following:

"Reach" of law. Drinking and driving provisions would be extended to apply anywhere "generally accessible to motor vehicles." 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. At present, a person convicted of drunk driving within seven years of a prior drunk driving offense is subject to maximum penalties of up to one year in jail, a fine of up to \$1,000, or both. The bill would retain these maximums, but would in addition mandate minimum penalties of a \$200 fine, and the imposition of either 10 to 90 days community service or 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 a sentence of either 10 to 90 days of community service or 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 vehicle code, 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 and revocations based on the offender's history; court-ordered sanctions would be based upon the defendant's Michigan driving record. The court would have to order suspensions immediately upon a verdict of guilty, a plea of guilty or a plea of nolo contendere. Ranges for suspensions and circumstances mandating revocation would be much as they are now; the legislation would diverge from current law primarily in its provisions for the imposition of an initial "hard" suspension period during which no restricted license could be issued (a restricted license allows the holder to drive certain places at certain times, such as to and from work). Under the legislation, a first-time OUIL offender would receive a mandatory license suspension, with no possibility of a suspended license, for the first 30 days of the required six-month to two-year suspension period. The mandatory "hard" 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 also would 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 "hard" suspension period would be first-time OWI.

Immediately upon receiving notice of an OWI or OUIL conviction, the secretary of state would effect a license suspension, whether or not the court had ordered one. Allowable suspension periods would be consistent with provisions for court-ordered suspensions.

Speedy disposition. A person arrested on a misdemeanor OUIL or OWI charge would have to be arraigned within 14 days after arrest. A pretrial conference generally would have to be held within 35 days after arrest (42 days would be allowed in one-judge districts where the judge sat in more than one location). The court would order the defendant to attend the pretrial conference, and could accept a plea at its conclusion. A pretrial conference could be adjourned upon the motion of a party for good cause shown, but not more than one adjournment could be granted to a party, and no adjournment could exceed 14 days. A case would have to be finally adjudicated within 77 days after the date of arrest; delays attributable to the unavailability of a defendant, witness, or evidence would be allowed, as would delays due to interlocutory appeal or "exceptional circumstances," but not delays caused by docket congestion.

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.

A petition for judicial review of an administrative final determination on a licensing sanction would have to be filed within 63 days after the determination was made, except that for good cause shown the court could allow the petition to be filed as much as 182 days after the determination.

Judicial review of administrative license denials and revocations would be governed by the law in effect at the time the offense was committed or attempted.

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.

License confiscation. A driver's license or permit would be immediately confiscated upon refusing a breathalyzer or other chemical test, or upon test results of 0.10 percent blood alcohol content. The officer confiscating the license would immediately destroy it and issue the driver a temporary license or permit to be used until the case was adjudicated. (Destruction of the license could be delayed pending receipt of blood test results.) The officer also would immediately notify the secretary of state via the Law Enforcement Information Network (LEIN) that a temporary license or permit had been issued.

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 October 1, 1991.

Drunk driving equipment and training fund. Of the \$30 increase in the license reinstatement fee, \$20 would be allocated to the Department of State and \$10 would be placed in the Drunk Driving Prevention Equipment and Training Fund to be created under House Bill 4828. The fund would be administered by the Department of State Police, which would use it to provide and maintain breath alcohol testing equipment and to train law enforcement personnel in preventing drunk driving. Money received under the bill could not supplant other governmental funds.

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 is 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.)

Annual drunk driving audit, other 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 numbers of dismissals, convictions, acquittals, and license sanctions ordered by each judge, plus the average 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 October 1, 1994.

House Bill 4827 includes definitions and provisions on probationary licenses, indorsement denials, judicial review, restricted licenses, the drunk driving audit, and court records and reports. House Bill 4828 contains provisions on license denials and revocations, judicial review, prosecutions, criminal penalties, attempted offenses, license reinstatements, the drunk driving prevention fund, and driving on a suspended license; this bill also sets forth the elements of the various drinking and driving offenses. Senate Bill 314 includes

provisions on drunk driving arrests, testing and suspensions for test refusal, and license confiscation. Senate Bill 315 contains provisions for license suspensions, speedy dispositions, court-ordered license sanctions, and points.