

## DRUG VIOLATORS: NO DRIVING

House Bill 4074 (Substitute H-2)

House Bill 4075 (Substitute H-2)

Sponsor: Rep. Floyd Clack

Second Analysis (10-6-93)

Committee: Transportation

### ***THE APPARENT PROBLEM:***

Substance abuse among Americans has increased dramatically over the last two decades, especially the illicit use of powerfully addicting drugs such as cocaine and so-called "crack." Heavy trafficking and use of drugs directly influences the crime rate, endangers the lives of citizens, erodes community morale, and costs governments and private industry billions of dollars for law enforcement, drug prevention, and drug rehabilitation programs. Efforts to reduce the drug problem focus on educating the public on the dangers of even minimal illicit drug use ("just say no"), reducing the flow of illegal substances into and throughout the country, and exacting stiffer penalties on drug traffickers and users. In order to attack the widespread distribution and use of drugs in this country, the federal government adopted regulations last year that require states to adopt laws that could deter criminal drug use by threatening those who violate drug laws with the loss of their driver's licenses. Failure to enact such laws could result in the loss of matching federal transportation funds. As states must comply by enacting such laws before April 1, legislation has been introduced that is patterned after federal law.

### ***THE CONTENT OF THE BILLS:***

The bills would amend the Michigan Vehicle Code and the Public Health Code to require the denial or suspension of a person's driver's license for certain drug-related offenses. Generally, a suspension would have to be for six months or, if an offender had a prior conviction within seven years, for one year. Also, House Bill 4074 would raise the minimum period for which a license would have to be suspended from 90 days to at least six months (up to one year) for operating a vehicle while impaired (OWI) by controlled substances or the combination of controlled substances and alcohol. The bills also would provide for the imposition of community service and rehabilitation, the issuance

of restricted licenses, and the maintenance of a central file of drug and steroid offenders. House Bill 4074 is tie-barred to House Bill 4075, and House Bill 4075 is tie-barred to Senate Bill 222 (which is similar to House Bill 4074 but includes language pertaining to the transport or possession of alcohol in a motor vehicle by someone under age 21; this bill currently is pending before the House Judiciary Committee). Both bills would take effect October 1, 1993.

House Bill 4075 would amend the Public Health Code (MCL 333.17766a) to require a sentencing court to impose licensing sanctions, in addition to any other penalties or sanctions imposed, for violating, or attempting or conspiring to violate, the act's controlled substance or androgenic anabolic steroid provisions.

License Suspensions. Immediately upon accepting a plea of guilty or nolo contendere or upon entry of a guilty verdict or probate court disposition for a controlled substance or androgenic anabolic steroid violation, the court would have to do the following:

- \* If the person had no prior convictions within seven years, order the secretary of state to suspend the person's operator's or chauffeur's license for six months. (The court could order the issuance of a restricted license for a specified portion of the suspension period, except during the first 30 days.)
- \* If the person had one or more prior convictions within seven years, order the secretary of state to suspend the person's operator's or chauffeur's license for one year. (The court could order the issuance of a restricted license for a portion of the suspension period, except during the first 60 days.)

A person whose license was ordered suspended immediately would have to surrender his or her license to the court. The court would have to

destroy it and forward to the secretary of state an abstract of conviction or probate court disposition with the court-ordered license sanctions. Upon receipt, the secretary of state would have to suspend the person's license and, if ordered by the court and if the person were otherwise eligible for a license, issue to the person a restricted license stating the limited driving privileges indicated on the abstract.

If the probate court disposition or judgment and sentence were appealed to circuit court, the court could, ex parte, order the secretary of state to stay the suspension or restricted license pending the outcome of the appeal. A suspension under the bill would have to be imposed to begin upon the expiration of any other suspension of the person's operator's or chauffeur's license that was in effect at the time of suspension under the bill.

For the bill's purposes, "prior conviction" would mean either 1) a conviction for a violation of, an attempt to violate, or a conspiracy to violate the act's controlled substance provisions (Part 74) or androgenic anabolic steroid provisions (Section 17766a), a local ordinance that prohibited conduct prohibited under those provisions, or a law or local ordinance of another state that prohibited conduct prohibited under those provisions, or 2) a conviction for a violation of, an attempt to violate, or a conspiracy to violate the Federal Controlled Substances Act (Title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970).

**Other Sanctions.** Before imposing sentence or entering a probate court disposition, other than court-ordered license sanctions, for a controlled substance or steroid violation, attempt, or conspiracy, the court would have to order the person to undergo screening and assessment to determine whether he or she likely would benefit from rehabilitative services, including alcohol or drug education and treatment programs. The person ordered to undergo the screening and assessment would have to pay the costs of those services.

As part of the sentence or probate court disposition for a violation covered by the bill, the court could order a person to perform up to 90 days of community service and/or to participate in and successfully complete one or more appropriate rehabilitative programs. A person ordered to perform community service could not receive compensation and would have to reimburse the

state or appropriate local unit of government for the cost of supervision incurred as a result of his or her activities in that service. A person ordered to participate in rehabilitative services would have to pay for the costs of those services. These provisions, however, would not apply to someone who was not eligible for probation under Chapter XI of the Code of Criminal Procedure.

**Restricted Licenses.** A restricted license issued pursuant to an order under the bill would permit the person to whom it was issued to:

- \* drive to and from his or her home and place of work;
- \* drive in the course of employment or occupation;
- \* drive to and from his or her home and the court's probation department, court-ordered community service program, or both;
- \* drive to and from his or her home and an alcohol or drug education or treatment program as ordered by the court; and
- \* drive to and from his or her home and educational institution at which the person was enrolled.

The court could not order the secretary of state to issue a restricted license unless the person stated under oath, and the court found pursuant to testimony or a sworn affidavit, that the person was unable to take public transportation to and from his or her work location, alcohol or drug education treatment, court-ordered community service, or educational institution and did not have any family members or other individuals able to provide transportation. The court could not order the secretary of state to issue a restricted license that would allow the operation of a truck or truck tractor, including a trailer, that hauled hazardous materials. A court order issued under the bill and a restricted license would have to indicate the person's allowed destination, approved route or routes as specified by the court, and the permitted times of travel.

**House Bill 4074** would amend the Michigan Vehicle Code (MCL 257.8a et al.) to require the secretary of state to suspend the license of a person for certain drug-related offenses pursuant to House Bill 4075, and maintain a central file of the names of all

persons convicted on a controlled substance or androgenic anabolic steroid offense for which licensing sanctions would be required under House Bill 4075.

Central File. The act currently requires the secretary of state to maintain a central file of the names of persons who possess an operator's or chauffeur's license, and all nonresident drivers against whom a civil infraction determination was entered and who failed to comply with an order or judgment imposed under the act. The central file must provide an individual, historical driving record for each person with respect to accidents, moving violations, and revocations and suspensions of the person's driving privileges. The bill would require that the central file include the names of persons convicted of a controlled substance or androgenic anabolic steroid offense subject to license suspension under House Bill 4075 and that it provide an individual, historical record of these convictions.

License Denial. The secretary of state could not issue a driver's license to an unlicensed person who was convicted of violating the provisions of House Bill 4075 relating to the use of a controlled substance or androgenic anabolic steroid. A license would have to be denied for a length of time that corresponded to the period of suspension applicable to a licensed driver who committed the offense. The denial period would begin when the person was otherwise eligible for a license.

License Suspensions for Drug-Related Offenses. The bill would require the secretary of state, upon receiving an abstract of conviction, to impose the license suspensions outlined in House Bill 4075 for a controlled substance or steroid offense. However, a suspension would have to be imposed regardless of whether the sentencing court ordered the licensing sanctions specified in House Bill 4075 and would have to begin upon the expiration of any other license suspension in effect.

For any of these offenses, or for an attempt or conspiracy to commit any of them, the secretary of state would have to suspend a person's driver's license for six months, if he or she had no prior convictions within seven years, or for one year, if the person had one or more prior convictions within seven years--regardless of whether the sentencing court ordered licensing actions. The same suspension periods would apply to a person who

violated a law of another state that prohibited conduct prohibited under the Michigan laws. Also, the provisions that currently allow for the issuance of a restricted license for certain alcohol- or drug and alcohol-related driving offenses--and that would apply to a controlled substance or steroid offense under House Bill 4075--would apply to the issuance of a restricted license under these circumstances. However, a person who was aggrieved by a final decision of the secretary of state in suspending or denying a license under these provisions could not petition the court to review the decision.

License Suspensions for OWI. The act currently requires that for a first-time violation of "operating while impaired" (OWI) due to consumption of a combination of intoxicating liquor and a controlled substance, the secretary of state (upon a court's order) must suspend the person's driver's license for at least 90 days, up to one year. For operating while impaired by consumption of a controlled substance, no licensing suspension is now required. The bill would raise the minimum license suspension that the secretary of state would have to impose for an OWI violation involving drugs and alcohol from 90 days to at least six months; also, for an OWI violation involving only a controlled substance, a license suspension of at least six months (up to one year) would have to be imposed.

The bill provides a procedure that a court would have to follow in the prosecution of a person for a drug- or drug and alcohol-related violation, and would require a court to report a finding made by a jury or the court as specified to the secretary of state. If a court found compelling circumstances sufficient to warrant the issuance of a restricted license by the secretary of state, this could be ordered by the court.

Reinstatement fee. A person whose license was suspended, revoked, or restricted under the bill, or under House Bill 4075, would have to pay to the secretary of state a license reinstatement fee of \$125 before his or her license could be issued or returned. (The fee currently applies to suspensions, revocations, and restrictions required or allowed under the act.)

### ***BACKGROUND INFORMATION:***

In March of this year, House Bills 4074 and 4075 were reported from the House Transportation Committee to the full House. (The committee

reported Substitute H-2 for House Bill 4074 and Substitute H-1 for House Bill 4075 to the full House.) Both bills were moved to Third Reading and then were re-referred to the House Transportation Committee. The second committee report recommends the adoption of Substitutes H-2 for both bills. Substitute H-2 for House Bill 4075 is identical to Substitute H-1 except for the tie-bar to Senate Bill 222; Substitute H-1 contained a tie-bar to House Bill 4074. (Senate Bill 222 is similar to House Bill 4074 but includes language pertaining to the transport or possession of alcohol in a motor vehicle by someone under age 21; this bill currently is pending before the House Judiciary Committee.)

### ***FISCAL IMPLICATIONS:***

The Department of State estimates it would incur approximately \$500,000 in administrative costs to implement the bills, based on an anticipated volume of 19,000 drug-related convictions. The department says that although the \$125 driver's license reinstatement fee specified in House Bill 4074 should provide enough revenue to cover its additional duties under the bills, it expects that a small percentage of this money would be collected in the first year of implementation. Any costs not covered by fees would have to be paid out of other departmental funds. (10-1-93)

The Department of Transportation says it could forfeit up to \$15 million in federal transportation funds for the 1993-94 fiscal year if the bills are not enacted by April 1, 1993, and possibly additional funds in future years. (10-1-93)

### ***ARGUMENTS:***

#### ***For:***

Drug trafficking and abuse have become perhaps the most threatening social problem in this nation during the last decade. Illegal use of controlled substances such as cocaine destroys the lives (and families) of abusers, while drug trafficking contributes significantly to the crime rate. The bills could help to minimize the use of drugs throughout the state by providing for the suspension of a person's driver's license if he or she were convicted of any of the drug violations specified under House Bill 4075. While threatening drug dealers and others who deliver drugs with license suspension probably would not deter them from their illegal activities (as such a risk would seem trivial next to the money that could be made in selling drugs), it

could help reduce drug dealing and use by those who do it for fun or small amounts of money. Especially with regard to young people, the threat of a long suspension of driving privileges could act as a deterrent from even casual involvement with drugs. The bills are patterned after federal regulations that require states to adopt laws that impose a minimum of six months license suspension for persons convicted of drug violations. In addition, House Bill 4074 would require six-month license suspension for OWI violations involving only drugs and raise the minimum suspension requirement that now applies for OWI offenses involving the combination of alcohol and drugs from 90 days to at least six months. Failure to adopt this legislation not only would send the wrong message to people who think involvement with drugs for fun and profit has no consequences; also, if not adopted before April 1 of this year, Michigan could lose about \$15 million in federal matching funds for transportation projects.

#### ***Response:***

License suspension has, particularly in the case of drunk drivers, proved to be an ineffective deterrent. Allowing persons convicted of drug crimes the ability to obtain restricted licenses would only weaken what is already a feeble deterrent.

#### ***Against:***

As originally introduced, the bills would have provided for driver's license suspension only when a person was convicted for using drugs in or near a motor vehicle. Expanding the concept of license suspension for a drug violation that occurs anywhere (for instance, smoking marijuana in one's home) goes well beyond the bills' original purposes. Obviously, the pernicious influence of drugs in society and the huge impact it has on people's lives (both economically and socially) calls for positive solutions. But suspending or denying a driver's license of someone convicted under the provisions of House Bill 4075 could be ruled unconstitutional and, in fact, may only serve to encourage such people to drive illegally.

#### ***Response:***

The tragic impact of drug use in American society today demands that more stringent measures be taken to attack this problem. Perhaps it can be said that, realistically, such penalties will not affect those hard-core drug traffickers who have fed off the weaknesses of others. On the other hand, young people who are non-users but very susceptible to peer influence or who have only minor involvement in drugs could be swayed from partaking in such

activities if they knew that getting caught could mean the temporary loss of driving privileges. And in one sense, the ability to drive a motor vehicle symbolizes what it means to live in a free society. But freedom requires responsibility. The bills would emphasize that the privilege to move about freely by driving a motor vehicle is dependent not only on how knowledgeable and able one is to operate a vehicle in a safe and responsible way, but also on how one responds to the question of whether or not to be involved with drugs.

#### ***Against:***

The federal government is simply overreaching its authority by imposing such a requirement on states and by threatening them with economic sanctions if they fail to adopt such a law. While many people understand the threat posed by drug trafficking and use to individuals and society, especially of addicting drugs like cocaine and heroine, they fear the approach taken in the bills to address the problem is simplistic at best. Penalizing those who violate drug laws with license suspensions and possible jail terms, and especially for violations that occur apart from driving, not only could lead to more people driving illegally, but also would contribute to overcrowding in state prisons. At worst, the bills' penalties could be imposed on those caught using marijuana, which some people believe presents less of a threat to human health and society than even alcohol but which continues to be stigmatized by society in general.

#### ***Response:***

Studies have shown prolonged marijuana use to be damaging not only to the lungs but also to the brain. Moreover, although marijuana is not as powerfully addicting as cocaine or heroine, some studies indicate that persons addicted to the more powerful drugs initially used marijuana (often, as teenagers), then later switched to one of the more potent drugs when the high produced by marijuana no longer was satisfying. It seems completely disingenuous to argue that marijuana use contributes little if anything to America's current drug problem.

#### ***Against:***

Although proponents of the bills argue that Michigan could forfeit millions of dollars in federal transportation funds if it fails to enact such legislation, the federal government has given all states the opportunity to avoid this possibility by adopting a resolution opposing the enactment of the federal requirement at the state level. House

Concurrent Resolution 73, which has passed the House and is currently pending in the Senate Judiciary Committee, would do just this. Currently, of 34 states officially in compliance with federal requirements, 25 have adopted resolutions opposing adoption of legislation similar to these bills and thereby removed the threat of federal sanctions.

#### ***Response:***

Even in the unlikely event that HCR 73 passes the Senate, Governor Engler has indicated his opposition to it while supporting the approach taken by the bills. If Michigan is going to avoid forfeiting this federal money, the current political environment here suggests this legislation, or something similar to it, will have to be the vehicle used to comply with the federal mandate.

#### ***Against:***

The Department of State says while the \$125 fee for reinstating a suspended license should enable it to cover its administrative costs under the bills after the first year of their implementation, it fears that revenue from this source probably will not cover its expected initial costs under the bills. The bills should ensure that all of the department's costs under the bills will be adequately funded, whether through higher (or other) fees or supplemental general funds.

#### ***POSITIONS:***

The executive office supports the bills and opposes HCR 73. (10-1-93)

The Department of State Police has indicated its support for the bills. (9-16-93)

The Department of Transportation has indicated its support for the bills. (9-14-93)

The Department of State supports the bills as long as its administrative costs under them will be adequately funded. (10-1-93)

The Michigan Farm Bureau supports the bills. (10-1-93)

The New Age Patriot, a newsletter advocating, among other things, legalization of marijuana, opposes the bills. (10-1-93)