



House  
Legislative  
Analysis  
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## DRIVER'S LICENSE SANCTIONS FOR UNDERAGE DRINKING

House Bill 4875 (Substitute H-1)  
First Analysis (11-19-96)

Sponsor: Rep. Michael Nye  
Committee: Judiciary and Civil Rights

### *THE APPARENT PROBLEM:*

The legal drinking age in Michigan is 21. The Liquor Control Act contains penalties for bars, bowling alleys, restaurants, supermarkets, and package stores who sell or furnish alcohol to people under that age, and penalties for young people under the legal drinking age who purchase, possess, and consume alcohol. However, for years a perception existed that the penalties provided for those who violated the law by selling alcohol to minors were significantly greater than those provided for the underage drinkers themselves. As a result, and after several different proposals for changes in the law had failed, on September 1, 1995, Public Act 122 of 1995 (enrolled House Bill 4136) took effect, amending the Liquor Control Act to increase sanctions on minors who consume or possess alcoholic liquor.

Although P.A. 122 achieved the decade-long goal of the legislature to increase sanctions for underage drinking, for various reasons a complementary proposal to allow for the suspension or delay of issuance of a minor's driver's license as a consequence for underage drinking has failed to become law. It is suggested that the addition of driver's license sanctions to the list of potential punishments for underage drinking would have a significant deterrent effect upon minors.

### *THE CONTENT OF THE BILL:*

House Bill 4875 would amend several sections of the Michigan Vehicle Code. The bill would provide for the repeal of the provisions in the Michigan Liquor Control Act regarding the possession or transportation of alcohol in a closed container in a motor vehicle by a person under 21 years of age and would place them in the Michigan Vehicle Code. Those provisions are as follows:

\*\* A person under 21 years of age knowingly possessing or transporting alcohol in a motor vehicle would be guilty of a misdemeanor. Exceptions would be provided for those employed by liquor licensees, the Liquor Control Commission, or common carriers designated by the commission or those accompanied by a person at least 21 years of age.

[By moving this provision from the Michigan Liquor Control Act to the Michigan Vehicle Code, a person convicted of such a violation would receive two points against his or her driver's license. (MCL 257.320a.)]

\*\* The owner of a vehicle used by a minor in the transporting of alcohol could, at the discretion of the court, have his or her vehicle impounded for 15 to 30 days if the court found that the person had knowledge of, or gave express or implied consent to, the use of the vehicle for transporting alcohol. Upon a complaint by the arresting officer, the court would issue an order to the vehicle owner, requiring him or her to show cause as to why the vehicle should not be impounded. A vehicle would not be impounded until after a hearing was held, and could not be impounded if the owner was able to show that the vehicle was needed in the direct pursuit of his or her employment or the actual operation of his or her business. During an impoundment, the vehicle would be held at a public or private garage at the expense and risk of the owner. Impoundment of a vehicle could be appealed under provisions governing the taking of appeals from judgments for damages. A lienholder's rights would not be affected under these provisions. A person who knowingly transferred title to a vehicle in order to avoid impoundment would be guilty of a misdemeanor.

In addition, the bill would add several new provisions regarding the transport of open alcohol by minors.

\*\* The bill would provide for a minor's driver's license to be suspended or restricted in cases where the minor had one or more prior convictions for illegally transporting alcohol, transporting open alcohol or violating a substantially similar local ordinance or law of another state. Upon a finding that a minor had one prior violation, the court would order the secretary of state to suspend that person's license for at least 90 days and not more than 180 days, but could order the issuance of a restricted license after the first 30 days of suspension. For two or more prior violations, the suspension would be for at least 180 days and not more than one year, with a restricted license possible after the first 60 days of suspension. The bill would require the court, in imposing

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its sanctions, to consider all prior underage drinking violations, including violations of local ordinances and similar laws in other states. (If a person did not have a license, the secretary of state would deny the application of the person for a license for the applicable suspension period.)

A court would not be allowed to order a restricted license unless the affected person stated under oath, and the court found based on the record in open court, that the person was unable to take public transportation to work, substance abuse treatment, the probation department, a court-ordered community service program, a medical treatment facility, or school and did not have anyone who could provide the transportation. The court order and the restricted license would indicate the work location of the affected person, the approved route or routes and the permitted times of travel. The restricted license would only permit the person to drive to and from work and in the course of employment, to and from a treatment program, to and from the court probation department, to and from community service, to and from a medical treatment facility for the treatment of a serious medical condition for the person, a member of his or her household, or immediate family, and to and from school. (The suspension or restriction could be rescinded pursuant to a circuit court review.)

\*\* The court would be allowed to order community service or substance abuse screening and assessment at the defendant's expense for violation of the code's provisions against the transportation of open alcohol in a motor vehicle and for the transportation or possession of alcohol in a motor vehicle by a minor.

\*\* If the court found reason to suspend or revoke a person's license, the court would be required to immediately forward the surrendered license and an abstract of the conviction to the secretary of state. The suspension of the license would be applied cumulatively with any other suspensions of the individual's license. If the judgment were appealed to the circuit court, the court could order the secretary of state to stay the suspension pending the outcome of the appeal.

\*\* Within 48 hours of determining that an alleged violator was less than 18 years of age, a law enforcement agency would be required to notify the minor's parent or legal guardian, provided that the identity of the parent or guardian was reasonably ascertainable. The notification could be made in person, by telephone, or by first-class mail.

The bill would also amend several other sections of the vehicle code.

\*\* Upon receipt of a record of an individual's conviction for underage drinking, a minor transporting alcohol in a motor vehicle, transporting open alcohol in a motor vehicle, or a substantially similar local ordinance, the secretary of state would be required to suspend the individual's operator's or chauffeur's license, and if applicable issue a restricted license as ordered by the court. In the case of a person who did not possess a license, the secretary of state would deny the application for a license for the applicable suspension period.

\*\* The vehicle code already provides that a person who fails to answer a citation or notice to appear or fails to comply with an order or judgment is guilty of a misdemeanor. However, such a misdemeanor is not considered a violation for the purpose of adding points to the individual's license. The bill would add the failure to answer a citation or notice to appeal an underage consumption or possession of alcohol violation to the list of violations that are not considered for adding points. (Without the exception, such violations would be included in the catch all category and the defendant would have points assessed against his or her license.)

\*\* The bill would require the suspension of the driver's or chauffeur's license of a person charged with or convicted of violating the laws against underage drinking, possession or transportation of alcoholic liquor as provided in either the Michigan Liquor Control Act, the Michigan Vehicle Code as amended by the bill, or a substantially similar local ordinance. If, after having been charged with or convicted of such a violation, the individual failed to answer a citation or a notice to appear in court or failed to comply with an order or judgment of the court (including the payment of fines and costs), then the court would have to send a notice to the individual through first-class mail sent to his or her last known address. The notice would have to inform the individual that he or she had 7 days after the notice was issued to appear or 14 days to comply with the order or judgment of the court, including paying all of the fines and costs, or the secretary of state would suspend his or her license. If the person did not appear or comply within the proscribed time period, the court would be required to immediately inform the secretary of state and the secretary of state would be required, with equal alacrity, to suspend the person's license and to notify him or her of the suspension by first-class mail. (Currently, licenses are suspended in like manner for similar non-compliance for violations of the Michigan Vehicle Code which pertain to driving under the influence of alcohol and rules pertaining to civil infractions [MCL 257.625 and 257.907].)

\*\*Currently, the secretary of state compiles an annual report of disposition of charges for violations of the Michigan Vehicle Code pertaining to driving under the

influence of alcohol. The bill would require the secretary of state to include the disposition of charges for violations of section 33b (underage drinking provisions) of the Michigan Liquor Control Act in the report.

\*\* The bill would also require court clerks and municipal judges to report abstracts of convictions for underage drinking under the Liquor Control Act or substantially similar local ordinances to the secretary of state, and the secretary of state would be required to include the abstract in the individual's master driving record. In addition, the bill would limit the exception provided for violations involving pedestrians, passengers, or bicycles to require the inclusion of convictions where a passenger was transporting open alcohol in the secretary of state's report.

\*\* The bill would also make a technical amendment to Section 320e, deleting a provision that was erroneously placed in the act in late 1994. The language refers to a section that was not enacted.

\*\* References to civil infractions would be removed where the actions described are now misdemeanors.

\*\* The bill would take effect April 1, 1997.

MCL 257.320 et. al.

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

Fiscal information is not available.

### ***ARGUMENTS:***

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

Underage drinking is a serious problem, as is teenage drunk driving. It is said to be a leading cause of death for teenagers and people in their twenties. Information from the Department of State shows that 5,278 drivers between the ages of 18 and 20 were charged with operating under the influence during 1991. The bill will help to complete the changes in the laws to combat underage drinking begun by Public Act 122 of 1995 (enrolled House Bill 4136) by increasing sanctions for underage drinking.

Proponents believe that providing for license revocation as a sanction is more likely to have a deterrent effect on young people because the loss of a driver's license or the inability to have one issued can severely limit them economically and socially. By providing a sanction that is likely to have a significant impact on teens it is hoped that the bill will help to reduce underage drinking.

Further, the bill would better organize the laws against underage drinking. It makes more sense for the laws against minors transporting alcohol in a motor vehicle to be placed in the vehicle code.

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

There are several problems with using the driver's license as an enforcement tool in this way. First, many argue that license suspensions are not effective in deterring people from driving. Instead, many people with suspended or revoked licenses continue to drive without licenses (although perhaps more cautiously). One possible consequence of this is that some people develop the attitude that being licensed is not necessary if one is careful; reportedly, many drivers who lose their licenses do not apply for new ones when their penalty time is up. Second, some people argue that driver's licenses should not be suspended for offenses unrelated to driving or not involving motor vehicles. Under the bills, and the provisions of P.A. 122, a 20-year-old who illegally possessed or consumed alcohol, but who did not drive under the influence (or even use a vehicle at all) could lose his or her license. Will driver's license suspensions be used to deter other crimes, such as shoplifting or breaking-and-entering? This trend is disturbing. If the driver's license is used as an enforcement tool for routine crimes or civil infractions (or even such "offenses" as dropping out of school, which is not against the law at all), won't it lose its force as a weapon against drunk driving?

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

The bill would allow the suspension of a driver's license only for a second or subsequent offense. And, a restricted license would be available to allow a person to get to and from work or school or to certain other activities (although not just to drive around aimlessly). The sanction of revoking one's driver's license is already used as an enforcement tool and often as punishment for activities unrelated to driving. A license can be suspended now if an underage person uses fake identification to buy alcohol (regardless of whether a car is involved or even whether the ID is a driver's license). It can also be suspended for driving away from a self-service gas station without paying or for failure to pay child support or to grant visitation. In some states, the driver's license has also been used to discourage school dropouts. If the threat of revoking a teen's driver's license is the only threat to which he or she will pay any attention, then by all means such a sanction should be used. The threat of license revocation is used with the hope of deterring certain activities; it does not necessarily have to have some form of moral or philosophical connection with the crime which is being punished.

***For:***

The bill would allow for greater accountability and family involvement by requiring law enforcement officers to notify the parent or guardian of a minor within 48 hours that their child had been in violation of possessing or transporting alcohol. For instance, a minor could not simply pay the fine and not mention the citation to his or her parent. Hopefully, this would encourage problem-solving at the family level, and lead to decreased violations on the part of minors.

***POSITIONS:***

The Prosecuting Attorneys Association of Michigan supports the concept of the bill. (11-19-96)

The Department of State Police does not oppose the bill. (11-18-96)

Analyst: W. Flory

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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.