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BILL ANALYSIS

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Senate Bill 347 (Substitute S-1 as reported)
Senate Bill 348 (as reported without amendment)
Sponsor: Senator William Van Regenmorter
Committee: Judiciary

Date Completed: 3-23-95

RATIONALE

Michigan's drunk driving law underwent extensive revision in 1982 and again in 1991. The 1991 changes were designed, in part, to close loopholes in the prior law and to rectify the inconsistent construction of some of the earlier amendments. Among other things, the later amendments expanded the application of the drunk driving law, stiffened penalties for repeat offenders, and created special penalties for drunk drivers who caused death or a long-term incapacitating injury. When it was pointed out that these amendments could be incomplete or subject to misinterpretation in some respects, the Legislature enacted Public Acts 448, 449, and 450 of 1994. These measures made a number of "cleanup" amendments, such as referring to a "serious impairment of a body function" instead of a "long-term incapacitating injury"; changing the standard for determining bodily alcohol content from the percentage of alcohol in the blood, to a measure of a specific amount of alcohol per specific amounts of blood, breath, or urine; making preliminary breath test results admissible in criminal proceedings for drunk driving offenses and in administrative hearings; forbidding courts from dismissing drunk driving cases for failure to meet statutory procedural deadlines; requiring police officers to notify the Secretary of State if a court-ordered chemical test revealed that a driver had an unlawful blood alcohol content; and specifying the duration of a temporary license.

Although the 1994 amendments addressed many of the issues remaining after the 1991 reforms, not all of the recently proposed changes were enacted. For example, the law prohibits drunk driving "upon a highway or other place open to the general public or generally accessible to motor vehicles", but many people believe that drunk driving should be prohibited *anywhere* in the State.

In addition, peace officers currently may make a warrantless arrest if they have reasonable cause to believe that a person is the operator of a vehicle involved in an accident and is impaired by or under the influence of alcohol; the law also provides that the results of a chemical blood analysis may be admitted in a civil or criminal proceeding if the driver of a vehicle involved in an accident is transported to a medical facility and blood is withdrawn for medical treatment. In several Michigan Supreme Court opinions, however, defendants who were found sleeping behind the wheel of a car parked beside a road were not considered to have been "operating" a vehicle or involved in an "accident". It has been suggested that these and other issues be addressed by further amendments to the drunk driving law.

CONTENT

Senate Bills 347 (S-1) and 348 would amend the Code of Criminal Procedure and the Michigan Vehicle Code, respectively, to do all of the following:

- **Apply drunk driving prohibitions to violations that occurred anywhere within Michigan, rather than to violations that occur on a highway or other place generally accessible to motor vehicles.**
- **Revise provisions that authorize warrantless arrests in drunk driving situations, including permitting the arrest of a person found in the driver's seat of a parked or stopped vehicle.**
- **Expand the repeat offender provisions for operating a vehicle under the influence of liquor or a controlled substance (OUIL) to include**

consideration of prior offenses of operating a vehicle while impaired due to the consumption of liquor (OWI), and revise the penalties for multiple OUIL violations within 10 years.

-- Delete the statutory presumption that a defendant was not impaired by or under the influence of liquor if his or her bodily alcohol content was below certain levels.

The bills are tie-barred and would take effect on January 1, 1996.

Senate Bill 347 (S-1)

The Code of Criminal Procedure allows a peace officer to make an arrest without a warrant if he or she has reasonable cause to believe a person was the operator of a vehicle involved in an accident and was impaired by or under the influence of liquor. The bill would add to that authorization situations in which an officer had reasonable cause to believe a person was the operator of a vehicle in violation of the Vehicle Code's prohibition against minors' drinking and driving or the Code's commercial vehicle drunk driving provisions.

The bill also would authorize an officer to arrest a person without a warrant if the person were found in the driver's seat of a vehicle parked or stopped on a highway or street within this State when the officer had reasonable cause to believe that the person was operating the vehicle in violation of the Vehicle Code's OUIL, OWI, minors' drinking and driving, or commercial vehicle drunk driving provisions.

Senate Bill 348

Scope of Drunk Driving Laws

The Michigan Vehicle Code's drunk driving prohibitions apply to the operation of a motor vehicle "upon a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles". The bill, instead, would apply the prohibitions to the operation of vehicle anywhere within Michigan.

Warrantless Arrests

The bill would authorize a peace officer to arrest a person without a warrant if the person were found in the driver's seat of a vehicle parked or stopped on a highway or street within Michigan and the officer had reasonable cause to believe that the person was operating the vehicle in violation of the Code's OUIL, OWI, or minor's drinking and driving provisions. In addition, a peace officer could arrest a person without a warrant if the person were found in the driver's seat of a commercial vehicle parked or stopped on a Michigan highway or street and the officer had reasonable cause to believe that the person was operating the vehicle in violation of the Code's commercial vehicle drunk driving provisions.

Repeat Offenders

Under the Code, if a person is convicted of OUIL and the violation occurs within seven years of a prior OUIL conviction, the person must be sentenced to pay a fine of $200 to $1,000 and either of the following:

-- Community service for not less than 10 or more than 90 days and possible imprisonment for up to one year.
-- Imprisonment for not less than 48 consecutive hours or more than one year and possible community service of up to 90 days.

The bill would subject a person to those enhanced penalties if he or she were convicted of an OUIL violation that occurred within seven years of a prior OUIL conviction or a prior OWI conviction.

In addition, if a person is convicted of OUIL and the violation occurs within 10 years of two or more prior OUIL convictions, the third violation is a felony requiring imprisonment for not less than one year or more than five years, or a fine of not less than $500 or more than $5,000, or both. Under the bill, enhanced penalties would apply to a person convicted of an OUIL violation occurring within 10 years of two or more prior OUIL convictions, one prior OUIL conviction and two OWI convictions, or three or more OWI convictions. The enhanced penalty for an OUIL conviction within 10 years of multiple violations would be either of the following:

-- Imprisonment under the jurisdiction of the Department of Corrections for an indeterminate sentence of not less than one year or more than five years.
-- Imprisonment in the county jail for not less than 30 days or more than one year.

A repeat offender also could be fined up to $5,000.

Statutory Presumptions

The Code specifies that, except in a prosecution for a violation involving a specific bodily alcohol content amount, the amount of alcohol in a driver's blood, breath, or urine, as shown by chemical analysis, gives rise to certain assumptions. The bill would delete the stated presumption that a defendant's ability to operate a motor vehicle *was not* impaired due to the consumption of liquor and that the defendant *was not* under the influence of liquor, if there was .07 gram or less of alcohol per 100 milliliters of the person's blood, 210 liters of his or her breath, or 67 milliliters of his or her urine.

The bill would retain presumptions that a defendant's ability to operate a motor vehicle *was* impaired due to the consumption of liquor if there was more than .07 gram but less than .10 gram of alcohol per 100 milliliters of blood, 210 liters of breath, or 67 milliliters of urine; and that a defendant *was* under the influence of liquor if there was .10 gram or more of alcohol per 100 milliliters of blood, 210 liters of breath, or 67 milliliters of urine.

MCL 764.15 (S.B. 347)
257.625 et al. (S.B. 348)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The bills would strengthen the drunk driving law by following up on the amendments made in 1994. Since drunk drivers can inflict personal injury and property damage wherever they operate, and since drunk driving should not be permitted anywhere in the State, Senate Bill 348 would extend the scope of the law to violations that occurred on private, as well as public, property. This change had been advocated last session, but was not part of the final enactments. Removing the presumption that someone was *not* impaired or under the influence if there was 0.07% or less alcohol in his or her blood, also was recommended previously. It is illogical to include this presumption in the drunk driving law, where the other presumptions operate *against* the defendant. In addition, individuals' alcohol tolerance varies considerably and many people may be quite impaired with a blood alcohol level of .07% or less. Senate Bill 348 also would strengthen the law by ensuring that anyone who committed a third OUIL offense in 10 years was incarcerated for at least 30 days; although a prison term currently must be from one to five years, an offender may be fined instead of serving any time at all. In addition, the bill would expand the scope of enhanced penalties by requiring that previous OWI convictions be counted when someone was convicted of OUIL within seven years of a prior offense.

Supporting Argument

The bills would increase public safety and facilitate the prosecution of drunk drivers by authorizing the warrantless arrest of someone found in the driver's seat of a parked vehicle. These provisions would address situations in which the Michigan Supreme Court has held that a defendant found asleep behind the wheel of a parked car could not be convicted of drunk driving. In *People* v *Pomeroy* and *People* v *Fulcher*, the Court said that "...under any reasonable interpretation of the phrase 'operate a vehicle', a person sleeping in a motionless car cannot be held to be presently operating a vehicle..." (419 Mich 441 (1984)). In *People* v *Keskimaki*, the Court interpreted the term "accident" for purposes of admitting the results of a blood test, and held that it did not apply to a situation in which the defendant was found slumped over the steering wheel of a vehicle lawfully parked on the shoulder of a road, with its headlights on and its motor running (446 Mich 240 (1994)). Under the bills, however, a person could be arrested without a warrant if she were found in a parked car and a peace officer had reasonable cause to believe the person was violating the drunk driving law. By limiting this to situations in which a vehicle was parked or stopped on a highway or street (which would include the right-of-way), the bills would avoid situations in which someone left a restaurant or bar, for example, and decided to "sleep it off" in the parking lot instead of driving under the influence. To paraphrase the Court in *Keskimaki*, including these situations would "discourage the one drop of sensible conduct in a sea of irresponsible action". If someone is found behind the wheel on the side of the road, however, it can reasonably be assumed that he or she had been driving the car.

Opposing Argument

Previous convictions for impaired driving should not be counted in order to impose an enhanced sentence on someone who commits a second OUIL offense in seven years. Since the law clearly makes a distinction between OWI and

OUIL, these offenses should not be considered the same for sentencing enhancement. Although it is true that many people plead down to OWI, the court's judgment is the final disposition of the case and should be taken at face value.

Opposing Argument

Under the law, not *all* drinking and driving is considered drunk driving: It is a criminal offense only when a person has consumed enough alcohol that his or her ability to drive is impaired. As a result, the law contains presumptions as to whether a person is impaired or under the influence, based on the amount of alcohol in his or her body. The presumption that someone is *not* impaired if his or her bodily alcohol content is below a certain level protects the ability of a person to drive after having consumed a marginal amount of alcohol, and protects against overzealous prosecution. Like the presumptions that go against a defendant, this presumption is rebuttable and a person may be convicted of drunk driving even with a bodily alcohol content below the level of presumed impairment.

Response: It is not necessary to have a statutory presumption that someone is not impaired, because all defendants enjoy a presumption of innocence throughout their trial.

Legislative Analyst: S. Margules

FISCAL IMPACT

Senate Bill 347 (S-1)

The bill would have an indeterminate impact on State and local government. If allowing warrantless arrests for additional violations resulted in increased convictions, sanctioning costs would increase. There is no reliable way to predict what impact increasing the number of warrantless arrest offenses would have on convictions.

Senate Bill 348

The bill would have an indeterminate impact on State and local government. Adding the OWI provision to the list of prior convictions that require incarceration under the second offense of OUIL could result in an increased number of individuals' being convicted and sentenced under this section.

In 1993, there were a total of 1,692 convictions for third OUIL offenses for which 421 (25%) individuals received a prison sentence. The other offenders received jail, probation, or some combination of jail and probation. Changing the law to allow a minimum of 30 days in jail could decrease the number of offenders sentenced to prison.

Fiscal Analyst: M. Hansen

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