Senate Fiscal Agency
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BILL ANALYSIS

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Senate Bill 347 (Substitute S-1 as passed by the Senate)
Senate Bill 348 (as passed by the Senate)
Sponsor: Senator William Van Regenmorter
Committee: Judiciary

Date Completed: 6-9-95

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.**
- **Require imprisonment for a third OUIL (operating under the influence) violation within 10 years.**
- **Require a vehicle to be forfeited or returned to the lessor if the vehicle's owner or lessee were convicted of OUIL within 10 years of two or more prior convictions, OWI (operating while**

impaired) within 10 years of three or more prior convictions, or OUIL or OWI that caused the death or serious impairment of a body function of another person.

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, if any part of the vehicle were on the roadway and 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". By deleting the quoted language, the bill would apply the prohibitions to the operation of a 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, if any part of the vehicle were on the roadway 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, if any part of the vehicle were on the roadway 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 10 years of two or more prior 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, the person would have to be fined at least $500 but not more than $5,000 *and* would be subject to one 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.

Currently, if a person is convicted of OWI for a violation that occurs within 10 years or two or more prior convictions, he or she must be sentenced to pay a fine of $200 to $1,000 and either 1) community service for 10 to 90 days and possible imprisonment for up to one year, or 2) imprisonment for up to one year and possible community service for up to 90 days. The bill would add that if the violation occurred within 10 years of three or more prior convictions, the person would be subject to that sentence and the vehicle would be subject to forfeiture or return to the lessor, as described below.

(Under the Code, for the OUIL offense, "prior conviction" means an OUIL violation, or an OUIL or OWI violation that caused the death or serious impairment of a body function of another person. For the OWI offense, "prior conviction" means an OUIL or OWI violation, or an OUIL or OWI violation that caused the death or serious impairment of a body function of another person.)

Vehicle Forfeiture

Under the bill, in addition to any other penalty provided for in the Code, a sentence for a conviction of OUIL within 10 years of two or more prior convictions, OWI within 10 years of three or more prior convictions, or OUIL or OWI that caused the death or serious impairment of a body function of another person, would have to require one of the following with regard to the vehicle used in the offense:

-- Forfeiture of the vehicle, if the defendant owned it in whole or in part.
-- Return of the vehicle to the lessor, if the defendant leased the vehicle.

The vehicle could be seized without process incident to a lawful arrest or pursuant to an order of seizure issued by the court having jurisdiction upon a showing of probable cause that the vehicle was subject to forfeiture or return. Within three days after the defendant's conviction, the prosecutor would have to give notice to all owners of the vehicle and any person holding a security interest in it of the intent to forfeit or require return of the vehicle.

An owner or lessee of the vehicle could bring a motion to require the seizing agency to file a lien against the vehicle and to return it to the owner or lessee pending disposition of the criminal proceedings. The court would have to hear the motion within seven days after it was filed. If the owner established at the hearing that he or she held the legal title of the vehicle, or if the lessee established that he or she had a leasehold interest, and that it was necessary for him or her or his or her family to use the vehicle pending the outcome of the forfeiture action, the court could order the seizing agency to return the vehicle to the owner or lessee. If the court ordered the return of the vehicle, it would have to order the seizing agency to file a lien against the vehicle.

The forfeiture would be subject to the interest of the holder of a security interest who did not have prior knowledge of or consent to the commission of the violation. Within 14 days after the prosecutor gave notice of intent to forfeit or require return of the vehicle, an owner, lessee, or holder of a security interest could file a claim of interest in the vehicle. Within 21 days after the period for filing claims expired, but before sentencing, the court would have to hold a hearing to determine the legitimacy of any claim, the extent of any co-owner's equity interest, and the liability of the defendant to any co-lessee.

The unit of government that seized the forfeited vehicle would have to sell it and dispose of the proceeds in the following order of priority:

-- To pay any outstanding security interest of a secured party who did not have prior knowledge of or consent to the commission of the violation.
-- To pay the equity interest of a co-owner who did not have prior knowledge of or consent to the commission of the violation.
-- To satisfy any order of restitution in the prosecution for the violation.
-- To pay the claim of each person who showed that he or she was a victim of the violation to the extent that the claim was not covered by an order of restitution.
-- To pay any outstanding lien against the property that had been imposed by a governmental unit.
-- To pay the proper expenses of the proceedings for forfeiture and sale, including expenses incurred during the seizure process and expenses for maintaining custody of the property, advertising, and court costs.

After the payment of items described above, the balance would have to be distributed by the court to the unit or units of government substantially involved in effecting the forfeiture. A unit of government would have to use 75% of the money received to enhance the enforcement of the criminal laws, and 25% to implement the Crime Victim's Rights Act, and would have to report annually to the Department of Management and Budget the amount of money received that was used for each purpose.

The court also could order the defendant to pay to a co-lessee any liability determined under the bill's provision governing the distribution of proceeds. This order could be enforced in the same manner as a civil judgment.

A person who knowingly concealed, sold, gave away, or otherwise transferred or disposed of a vehicle with the intent to avoid forfeiture or return of the vehicle to the lessor would be guilty of a felony punishable by imprisonment for up to four years and/or a maximum fine of $2,000.

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. The bill 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.

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, 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 borrow language of 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 of a car that is at least partially on the roadway, however, it can reasonably be assumed that he or she had been driving the car.

Supporting Argument

Although various laws have been passed in recent years to stiffen criminal and civil penalties for drunk drivers, habitual drunk driving continues to be a problem in Michigan. In 1993, there were 1,692 convictions for a third OUIL offense in 10 years; in 1994, the number of convictions grew to 1,810. Another approach to punishing drunk drivers and attempting to deter repeat offenders is to take from a drunk driver the tool with which the crime is committed. Senate Bill 348 would accomplish this by requiring the seizure and forfeiture of a vehicle owned, or the return to the lessor of a vehicle leased, by a person convicted of a third OUIL offense in 10 years, a fourth OWI offense in 10 years, or OUIL or OWI that caused death or serious impairment of a body function. Moreover, the forfeiture of a habitual drunk driver's vehicle could provide additional funds for victims' services and law enforcement purposes.

Response: The bill could have little effect on drunk drivers, since it reportedly is rare for habitual offenders to have a car titled in their own name. Often, they drive vehicles titled in the name of a spouse, parent, sibling, or friend. Even if an offender's own vehicle were seized and forfeited, or returned to the lessor, it would not necessarily keep the offender from driving a vehicle belonging to someone else.

Opposing Argument

Requiring the seizure of a vehicle for drunk driving would be an unduly extreme measure. In some cases, a spouse or partner could lose his or her rights to a jointly owned car, or a family could lose its only source of transportation. While punishing and deterring habitual drunk drivers are worth goals, the effect of Senate Bill 348 could be to punish innocent co-owners or family members. Moreover, the confiscation of joint property could be unconstitutional; recently, the United States Supreme Court agreed to address this issue.

Opposing Argument

Senate Bill 348 could be overly punitive by subjecting the lessee of a seized car to a lawsuit by the lessor. If a leased vehicle is returned to the lessor, the lessee generally remains liable for difference between the original value of the vehicle and its value at the time of return. The same holds

true in the case of a vehicle being financed: The purchaser would be liable for the difference between the amount financed and the worth of the car when it was seized and forfeited. While it would not be unreasonable to deprive a habitual drunk driver of his or her vehicle, it would be unduly harsh to subject someone to an automatic lawsuit and a financial liability that could amount to thousands of dollars

Response: Presumably, it would be extremely unlikely that a habitual drunk driver could lease a vehicle. Furthermore, this additional penalty would not be inappropriate, since it is common for actual drunk driving incidents to outnumber drunk driving convictions.

Opposing Argument

Although the Revised Judicature Act already provides for the seizure and forfeiture of property used in many crimes, it would not be fair to deprive a person of his or her total equity in a seized vehicle. There is a considerable monetary difference between taking away someone's gun and taking away his or her automobile.

Response: The RJA provides for the seizure and forfeiture of both personal and real property, which can be far more valuable than an automobile. Furthermore, like Senate Bill 348, the RJA requires the balance of the proceeds, if any, to be distributed to local units of government, not to the offender, after payments to other parties.

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

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.

Revenue generated under the forfeiture provisions of the bill would depend on the number of vehicles, the unencumbered value, and the costs of the forfeiture proceedings.

Fiscal Analyst: M. Hansen

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