Senate Fiscal Agency
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BILL ANALYSIS

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Senate Bills 347 and 348 (as enrolled)
Sponsor: Senator William Van Regenmorter
Senate Committee: Judiciary
House Committee: Judiciary and Civil Rights

PUBLIC ACTS 490 and 491 of 1996

Date Completed: 1-14-97

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 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, particularly if death or serious injury results. 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 was suggested that these and other issues be addressed by further amendments to the drunk driving law.

CONTENT

Senate Bills 347 and 348 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 occur anywhere within Michigan, if an accident caused the death or serious impairment of a body function of another person.**
- **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 an OUIL (operating under the influence) violation within 10 years of two or more prior convictions.**
- **Permit a vehicle to be forfeited or returned to the lessor if the vehicle's owner or lessee is convicted of OUIL, OWI (operating while impaired) within seven years of one prior conviction or**

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

The bills were tie-barred and will take effect on April 1, 1997.

Senate Bill 347

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 adds to that authorization situations in which an officer has 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 authorizes an officer to arrest a person without a warrant if the person is 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 intrudes into the roadway and the officer has 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.

In addition, the Code of Criminal Procedure allows a warrantless arrest if a peace officer has reasonable cause to believe that a person was operating a snowmobile or off-road recreation vehicle (ORV) while under the influence of intoxicating liquor, a controlled substance, or both. Under the bill, a peace officer may make a warrantless arrest if he or she has reasonable cause to believe that a person was operating a snowmobile, an ORV, or a vessel while under the influence, with a blood alcohol content of 0.10% or more, or while visibly impaired, in violation of provisions in the Natural Resources and Environmental Protection Act or a substantially corresponding local ordinance.

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 deletes the quoted language in regard to violations that caused the death or serious impairment of a body function of another person.

Warrantless Arrests

The bill authorizes a peace officer to arrest a person without a warrant if the person is 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 intrudes into the roadway and the officer has 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 may arrest a person without a warrant if the person is 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 intrudes into the roadway and the officer has reasonable cause to believe that the person was operating the vehicle in violation of the Code's commercial vehicle drunk driving provisions.

Repeat OUIL 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 must be sentenced to pay a fine of at least $500 but not more than $5,000 *and* to either of the following:

-- Imprisonment under the jurisdiction of the Department of Corrections for not less than one year or more than five years.
-- Probation with imprisonment in the county jail for not less than 30 days or more than one year. At least 48 hours of the imprisonment must be served consecutively.

(Under the Code, for an 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.)

Vehicle Forfeiture

Under the bill, in addition to any other penalty provided for in the Code, a sentence for a

conviction of OUIL, OWI within seven years of one prior conviction or within 10 years of two or more prior convictions, or OUIL or OWI two caused the death or serious impairment of a body function of another person, may require one of the following with regard to the vehicle used in the offense:

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

(Under the Code, 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.)

The vehicle may be seized pursuant to an order of seizure issued by the court having jurisdiction upon a showing of probable cause that the vehicle is subject to forfeiture or return. Within three days after the defendant's conviction, the court must notify the defendant, his or her attorney, and the prosecuting attorney if the court intends to consider imposing a sanction under these provisions. Within three days after this notice, the prosecutor must give notice to all owners of the vehicle and any person holding a security interest in it that the court may require forfeiture or return of the vehicle.

If a vehicle is seized before disposition of the criminal proceedings, a defendant who is an owner or lessee of the vehicle may 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 must hear the motion within seven days after it is filed. If the defendant establishes at the hearing that he or she holds the legal title of the vehicle, or has a leasehold interest, and that it is necessary for him or her or his or her family to use the vehicle pending the outcome of the forfeiture action, the court may order the seizing agency to return the vehicle to the owner or lessee. If the court orders the return of the vehicle, it must order the seizing agency to file a lien against the vehicle.

The forfeiture is 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 notice by the prosecutor, an owner, lessee, or holder of a security interest may file a claim of interest in the vehicle. Within 21 days after the period for filing claims expires, but before sentencing, the court must 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 must 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 entered in the prosecution for the violation.
-- To pay the claim of each person who shows that he or she is a victim of the violation to the extent that the claim is not covered by an order of restitution.
-- To pay any outstanding lien against the property that has 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 must be distributed by the court to the unit or units of government substantially involved in effecting the forfeiture. A unit of government must 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 must report annually to the Department of Management and Budget the amount of money received that was used for each purpose.

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

The bill specifies that the return of a vehicle to the lessor does not affect or impair the lessor's rights or the defendant's obligations under the lease.

A person who knowingly conceals, sells, gives away, or otherwise transfers or disposes of a vehicle with the intent to avoid forfeiture or return of the vehicle to the lessor will 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 strengthen the drunk driving law by following up on the amendments made in 1994. Since drunk drivers who inflict serious personal injury or death should be penalized regardless of where the accident occurs, Senate Bill 348 extends the scope of the law to violations that occur on private, as well as public, property. This change had been advocated during the 1993-94 session, but was not part of the final enactments. The bill also strengthens the law by ensuring that anyone who commits a third OUIL offense in 10 years will be 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.

Response: Earlier versions of Senate Bill 348 would have extended the scope of the law to any drunk driving violation that occurred on private or public property.

Supporting Argument

The bills will 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 may be arrested without a warrant if she is found in a parked car and a peace officer has reasonable cause to believe the person was violating the drunk driving law. In addition, the bills are consistent with a 1995 Michigan Supreme Court decision that "'operating' should be defined in terms of the danger the OUIL statute seeks to prevent: the collision of a vehicle being operated by a person under the influence of intoxicating liquor with other persons or property" (*People* v *Wood*, 450 Mich 399). In this case, the Court held that the defendant continued to operate a motionless vehicle, whose engine was running, when he was found unconscious (at a McDonald's drive-through window) with his foot on the brake.

By limiting the warrantless arrest provisions to situations in which a vehicle is parked or stopped on a highway or street, however, the bills will avoid situations in which someone leaves a restaurant or bar, for example, and decides 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 will accomplish this by allowing the seizure and forfeiture of a vehicle owned, or the return to the lessor of a vehicle leased, by a person convicted of OUIL, a repeat OWI offense, or OUIL or OWI that caused death or serious impairment of a body function. Moreover, the forfeiture of a habitual drunk driver's vehicle may provide additional funds for victims' services and law enforcement purposes.

Response: The bill might 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 is seized and forfeited, or returned to the lessor, it will not necessarily keep the offender from driving a vehicle belonging to someone else.

Opposing Argument

The forfeiture of a vehicle for drunk driving is an unduly extreme measure. In some cases, a spouse or partner might lose his or her rights to a

jointly owned car, or a family might lose its only source of transportation. While punishing and deterring habitual drunk drivers are worthy goals, the effect of Senate Bill 348 could be to punish innocent co-owners or family members.

Opposing Argument

Although the Revised Judicature Act already provides for the seizure and forfeiture of property used in many crimes, it is not 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

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

Senate Bill 348

In 1995, there were a total of 1,945 convictions for third OUIL offenses for which 561 (29%) individuals received a prison sentence, 1,083 (56%) received probation, and 262 (14%) received a jail sentence. Changing the law to require either a minimum of 30 days in jail followed by probation, or one year in prison might decrease the number of offenders sentenced to prison, while increasing the number of jail and probation dispositions.

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

Fiscal Analyst: M. Hansen

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