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BILL



ANALYSIS

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Senate Bills 347 and 348
Sponsor: Senator William Van Regenmorter
Committee: Judiciary

Date Completed: 3-6-95

SUMMARY OF SENATE BILLS 347 and 348 as introduced 2-28-95:

Senate Bills 347 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

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 parked or stopped vehicle when the officer had reasonable cause to believe that the person was operating the vehicle in violation of the Vehicle Code's OUIL, OWI, minor's 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, 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)

Legislative Analyst: P. Affholter

FISCAL IMPACT

Senate Bill 347

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 third 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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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.