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BILL ANALYSIS



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House Bill 4875 (Substitute H-1 as passed by the House)
Sponsor: Representative Michael Nye
House Committee: Judiciary and Civil Rights
Senate Committee: Judiciary

Date Completed: 12-3-96

CONTENT

The bill would amend the Michigan Vehicle Code to do all of the following:

- Repeal from the Michigan Liquor Control Act and reenact in the Vehicle Code a prohibition against transporting or possessing alcohol, in a motor vehicle, by someone under 21 years of age.
- Require parental notification when a person under 18 was alleged to have transported or possessed alcohol in a vehicle.
- Provide for driver's license sanctions and other penalties for transporting or possessing, in a motor vehicle, alcohol in an open container and for a minor's transporting or possessing alcohol in a motor vehicle.
- Provide for driver's license sanctions for failure to answer a citation or a notice to appear for a minor's possession, purchase, or consumption of alcohol; transporting or possessing an open container of alcohol in a motor vehicle; or a minor's transporting or possessing alcohol in a motor vehicle.
- Specify that failure to answer a citation or notice to appear for the possession, purchase, or consumption of alcohol by a person under 21 would not be considered a violation for purposes of assigning points to a person's driver's license.
- Delete a requirement that \$30 of every \$125 license reinstatement fee for certain offenses be deposited in the "Underage Drinking Case Information Management Fund" (which was never enacted), and that the remaining \$95 be allocated to the Department of State.
- Require the Secretary of State to include in the annual report of drunk driving dispositions those dispositions for a minor's possession, purchase, or consumption of alcohol and the provision or use of fraudulent identification to purchase alcohol.

The bill would take effect on April 1, 1997.

Minor's Transport of Alcohol

Repeal and Reenactment. It is a misdemeanor, under the Michigan Liquor Control Act, for a person under 21 knowingly to transport or possess alcohol, in a motor vehicle, unless he or she is employed by a liquor licensee, a common carrier designated by the Liquor Control Commission (LCC), the LCC, or an agent of the LCC and is transporting or possessing the alcohol during regular working hours and in the course of his or her employment. This provision would be repealed from the Michigan Liquor Control Act and the violation would be reenacted in the Michigan Vehicle Code.

The provision to be reenacted also provides for the impoundment of the vehicle used in the violation. Under the Michigan Liquor Control Act, if a court determines, upon a hearing and from competent and relevant evidence, that the motor vehicle was driven by the offender with the vehicle owner's express or implied consent or knowledge, and that use of the vehicle is not needed by the owner in the direct pursuit of his or her employment or the actual operation of the owner's business, the court is required to authorize the vehicle's impoundment for a period determined by the court of not less than 15 days or more than 30 days. Under the reenacted provision in the Michigan Vehicle Code, court-ordered impoundment would be permissive, rather than mandatory.

In addition, the bill specifies that the prohibition would not prevent a person under 21 from knowingly transporting alcohol in a motor vehicle if a person who was at least 21 were present in the vehicle.

The bill also provides that, as part of the sentence for the misdemeanor violation, a person could be ordered to perform community service and undergo substance abuse screening and assessment, at his or her own expense, as is currently the case for possession, purchase, or consumption of alcohol by a person under 21.

Under the bill, the violation for a minor's transport or possession of alcohol, in a vehicle, would require two points to be recorded on the offender's driver's license record.

Parental Notification. Under the bill, upon determining that a person less than 18 years of age allegedly transported or possessed alcohol in a motor vehicle, a law enforcement agency would have to notify the person's parent or parents, custodian, or guardian as to the nature of the violation, if the name of the parent, custodian, or guardian were reasonably ascertainable. The notice would have to be made no later than 48 hours after the law enforcement agency determined that the person was under 18. Notice could be made in person, by telephone, or by first-class mail.

License Sanctions and Other Penalties

Community Service/Substance Abuse Screening. Under the Vehicle Code, it is a misdemeanor to transport or possess alcohol in a container that is open or uncapped or upon which the seal is broken within the passenger compartment of a vehicle upon a highway, or within the passenger compartment of a moving vehicle in any place open to the general public or generally accessible to motor vehicles. The bill specifies that, as part of the sentence for that violation, a person could be ordered to perform community service and undergo substance abuse screening and assessment, at his or her own expense, as is currently the case for possession, purchase, or consumption of alcohol by a person under 21.

License Sanctions. The bill would provide for driver's license sanctions for the Code's transport of open alcohol violation and the reenacted violation of a minor's transport of alcohol. For both of those violations, immediately upon the entry of a conviction, the court would have to consider all prior convictions for either violation.

If the court found that the person had one prior conviction, it would have to order the Secretary of State to suspend the person's operator's or chauffeur's license for at least 90 days, but not more than 180 days. The court could order the Secretary of State to issue to the person a restricted license after the first 30 days of the suspension period. In the case of a person who did not possess a driver's license, the Secretary of State would have to deny the application for an operator's or chauffeur's license for the applicable suspension period.

If the court found that the person had two or more prior convictions for either alcohol transport offense, the court would have to order the Secretary of State to suspend the person's license for at least 180 days, but not more than one year. The court could order the Secretary of State to issue to the person a restricted license after the first 60 days of the suspension period. In the case of a person who did not possess a driver's license, the Secretary of State would have to deny the application for an operator's or chauffeur's license for the applicable suspension period.

If a restricted license were allowed, the court could not order the Secretary of State to issue a restricted license unless the 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 and from his or her work location, place of alcohol or drug education treatment, court probation department, court-ordered community service program, or educational institution, or a place of regularly occurring medical treatment for a serious condition, or in the course of the person's employment or occupation, and did not have any family members or others able to provide transportation. The court order and the restricted license would have to indicate the person's work location and the approved route or routes and permitted times of travel. A restricted license would have to permit the person to whom it was issued to drive only under one or more of the following circumstances:

- To and from his or her residence and work location.
- In the course of the person's employment or occupation.
- To and from the person's residence and an alcohol or drug education or treatment program as ordered by the court.
- To and from his or her residence and the court probation department, or a court-ordered community service program, or both.
- To and from the person's residence and an educational institution at which he or she was enrolled as a student.
- To and from his or her residence or work location and a place of regularly occurring medical treatment for a serious condition for the person or a member of the person's household or immediate family.

The court immediately would have to forward the surrendered license and an abstract of conviction to the Secretary of State. A suspension ordered under the bill would be in addition to any other suspension of the person's operator's or chauffeur's license. If the judgment were appealed to the circuit court, the court could, ex parte, order the Secretary of State to stay the suspension pending the outcome of the appeal.

Failure to Appear

Under the bill, if a person charged with, or convicted of, possession, purchase, or consumption of alcohol by a person under 21; transport of alcohol in an open container, or transport or possession of alcohol in a vehicle by a person under 21 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 but not limited to paying all fines and costs, the court immediately would have to give notice by first-class mail sent to the person's last known address. The notice would have to state that, if the person failed to appear within seven days, or failed to comply with the court's order or judgment within 14 days, the Secretary of State would suspend the person's driver's license. If the person failed to appear within the seven-day period, or failed to comply within the 14-day period, the court immediately would have to inform the Secretary of State who then would have to suspend person's driver's license and notify the person of the suspension by first-class mail. (This provision would be consistent with a current provision in the Vehicle Code for failure to appear or failure to comply with an order or judgment in relation to a drunk driving case.)

A suspension would remain in effect until the court informed the Secretary of State that the person had appeared before the court and that all matters relating to the violation or to noncompliance were resolved and the person paid the court a \$25 driver's license reinstatement fee.

The Vehicle Code specifies that failure to answer a citation, or a notice to appear in court for a violation of the Code or a corresponding local ordinance, or for any pending matter or failure to comply with an order or judgment is not considered a violation for purposes of assigning driver's license points. The bill would add that failure to answer a citation or notice to appear for a minor's possession, purchase, or consumption of alcohol, in violation of the Michigan Liquor Control Act, would not be considered a violation for purposes of assigning driver's license points.

Reinstatement Fee Allocation

The Vehicle Code currently provides that a person whose operator's or chauffeur's license is suspended, revoked, or restricted for possession, purchase, or consumption of alcohol by a person under 21 must pay a license reinstatement fee of \$125 to the Secretary of State before a license is issued or returned to the person. Although the Code specifies that \$30 of that amount must be deposited in the "Underage Drinking Case Information Management Fund", creation of that Fund was never enacted. The bill would retain the requirement of a \$125 reinstatement fee, which also would apply for the bill's proposed license suspension provisions, but would delete the allocation provision.

Disposition Report

The Vehicle Code requires that the Secretary of State compile a report of dispositions of charges for drunk driving violations by each judge for inclusion in the Department of State Police's "Michigan Annual Drunk Driving Audit". The bill would require that, in addition to the drunk driving violations, the Secretary of State include in its report information about dispositions for possession, purchase, and consumption of alcohol by persons under 21 and for the provision or use of fraudulent identification to purchase alcohol, both of which are violations of the Michigan Liquor Control Act.

MCL 257.303 et al.

Legislative Analyst: P. Affholter

FISCAL IMPACT

Costs to the Department of State regarding driver's license suspensions would be offset by driver's license reinstatement fees.

Fiscal Analyst: B. Bowerman

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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.