



Romney Building, 10th Floor
Lansing, Michigan 48909
Phone: 517/373-6466

DRUNK DRIVING: REPEAT OFFENDERS

**House Bill 4959 (Substitute H-2)
Sponsor: Rep. Frank Fitzgerald**

**House Bill 4960 (Substitute H-2)
Sponsor: Rep. Charles Perricone**

**House Bill 4961 (Substitute H-1)
Sponsor: Rep. Patricia Godchaux**

**House Bill 5951 (Substitute H-1)
Sponsor: Rep. George Mans**

**House Bill 5952 (Substitute H-2)
Sponsor: Rep. Mark Schauer**

**House Bill 5953 (Substitute H-1)
Sponsor: Rep. Gloria Schermesser**

**House Bill 5954 (Substitute H-1)
Sponsor: Rep. Bob Brown**

**House Bill 5955 (Substitute H-1)
Sponsor: Rep. William Callahan**

**House Bill 5956 (Substitute H-1)
Sponsor: Rep. Rose Bogardus**

**First Analysis (6-30-98)
Committee: Judiciary**

House Bills 4959-4961 and 5951-5956 (6-30-98)

THE APPARENT PROBLEM:

Michigan's drunk driving laws, which are contained in the vehicle code, have been amended repeatedly in the past decade in an attempt to take drunk drivers off the roads. Extensive revisions to the law made in 1991, among other things, expanded the application of drunk driving laws, stiffened penalties for repeat offenders, created special penalties for drunk driving that caused death or serious injury, required attempted offenses to be treated as if completed, and required speedy disposition of drunk driving cases. The drunk driving laws were further amended in 1994, and yet again in 1996, to correct a number of problems that came to light after enactment of the 1991 revisions (that took

effect in 1992). One of the 1994 amendments closed a loophole that people reportedly had been using in attempts to avoid the stiff repeat-offender penalties for convictions under the 1992 revisions. One of the 1996 amendments allowed courts to confiscate vehicles for convictions for driving while under the influence ("OUIL," or "operating while under the influence of liquor") and driving while impaired ("OWI, or "operating while visibly impaired") and required imprisonment for felony OUIL.

Despite these attempts to get dangerous drivers off the roads, stories continue to appear in newspapers of

people being killed or maimed by drunk drivers or by drivers (often convicted of drunk driving) who continue to drive despite having their licenses suspended or revoked. One very well-publicized incident occurred last June in Oakland County, when two Detroit Red Wing hockey players and one of their trainers were seriously injured in a one-car crash caused when the driver of their limousine -- who was driving with a suspended license (DWLS) -- apparently blacked out and crashed the car. Once again, legislation has been introduced to address the problem of how to prevent drunk drivers -- and drivers with suspended or revoked licenses -- from continuing to drive and, in some cases, to kill and maim others.

THE CONTENT OF THE BILLS:

The bills generally would increase penalties for drunk driving violations and for driving without a license ("DWLS," or "driving while license suspended"), particularly for repeat offenders.

In brief, the nine-bill package would do the following:

** Allow any prior conviction for any of the drunk driving offenses (except for allowing someone to drive OUIL) to be used to enhance drunk driving penalties;

** Make an OWI or a commercial drunk driving conviction within 10 years of 2 or more prior drunk driving convictions a felony;

** Require the confiscation of a vehicle's license plates when someone was stopped for any second (or subsequent) drunk driving or driving without a license offense and the issuance of a paper license plate good for 100 days;

** Allow vehicle immobilization for a first drunk driving offense and require it for a second (or subsequent) drunk driving or driving without a license offense, and make it a misdemeanor to drive a vehicle that was supposed to be immobilized;

** Eliminate vehicle forfeiture for a first OUIL offense, but continue to allow it for second (or subsequent) OUIL or OWI offenses;

** Remove licensing actions from the courts (which would continue to determine guilt for criminal charges) and make the secretary of state exclusively responsible for imposing licensing sanctions;

** Limit judicial appeals of secretary of state license actions to reviews of the record (that is, eliminate the taking of new testimony); and

** Require drivers to prove by clear and convincing evidence that they could drive safely when applying for license reinstatement.

Repealer. House Bill 4959 would repeal two sections of the Michigan Vehicle Code: MCL 257.323a, which provides for ex parte orders to stay license suspensions or revocations by the secretary of state, and MCL 257.323c, which allows courts to order license restrictions.

Tie-bar. The bills all are tie-barred to each other and to the following four bills which already have been acted on by the House:

** House Bill 4210 (currently in Senate committee), which would require ignition interlock devices under certain circumstances;

** House Bill 4576 (currently on second reading in the House), which would allow any conviction for drunk driving or driving without a license to count toward enhanced penalties, make OUIL a felony when the offender had any two prior alcohol-related convictions, and require drug and alcohol treatment for habitual drunk driving offenders; and

** House Bills 5122 and 5123 (passed by the House), which would increase penalties for driving without a license ("DWLS," or "driving with license suspended") when death or serious injury resulted.

Effective date All of the bills, if enacted, would take effect on October 1, 1999.

The provisions of the bills, in more detail, are as follows:

FELONIES, "PRIOR CONVICTIONS," AND PENALTY ENHANCEMENT

Currently, the Michigan Vehicle Code recognizes the following drunk driving crimes:

- (1) Two misdemeanor and one felony OUIL violation(s);
- (2) Allowing someone to drive OUIL (a misdemeanor);
- (3) Three misdemeanor OWI violations;
- (4) Causing death when OUIL or OWI (a felony);

(5) Causing serious injury when OUIL or OWI (a felony);

(6) Two misdemeanor "zero tolerance" (that is driving under the age of 21 with "any bodily alcohol content") violations; and

(7) Two misdemeanor commercial drunk driving violations.

OUIL, OWI, and "zero tolerance" offenses, generally, have graduated penalties based on the defendant's prior convictions within a certain number of years (the exception is for second and third level OWI misdemeanors). There is one set of penalties for first convictions for OUIL, OWI, and "zero tolerance" violations; another for second convictions ("a conviction") within 7 years of a prior conviction (with "prior conviction" defined differently for each); and a third for third and subsequent OUIL and OWI (but not "zero tolerance") convictions (a conviction within 10 years of two or more prior convictions). An OUIL violation at this third level is a felony, while the corresponding OWI violation remains a misdemeanor (though with the same penalties as for a second-level OWI misdemeanor). There is one set of penalties for an initial commercial drunk driving violation, another for a commercial drunk driving conviction within 10 years of one (rather than 2 or more) prior alcohol-related conviction. (There is no misdemeanor or penalty for commercial drunk driving violations committed within 7 years of any prior drunk driving convictions.)

Prosecutors may seek enhanced sentences for second-level OUIL, OWI, and "zero tolerance" violations, and for third-level OUIL and OWI violations (there is no third level for "zero tolerance" violations).

House Bill 5956 would amend the Michigan Vehicle Code (MCL 2576.625) to change the definition of "prior conviction," add two new drunk driving felonies, eliminate vehicle forfeiture for a first OUIL violation, add vehicle immobilization sanctions for drunk driving violations, and change 90-day misdemeanor imprisonment terms to 93 days.

The bill would change the definition of "prior conviction," and apply it whenever the vehicle code referred to multiple drunk driving violations. Currently, "prior conviction" is defined differently for multiple OUIL, OWI, "zero tolerance," and commercial drunk driving violations. (All current definitions include felony OUIL or OWI violations resulting in death or serious injury, but only OUIL convictions apply in the definition as applied to OUIL violations, while OUIL and OWI convictions apply in

the definition as applied to OWI violations; OUIL, OWI, and "zero tolerance" convictions apply in the definition as applied to "zero tolerance" violations; and OUIL, OWI, and commercial drunk driving convictions apply in the definition as applied to commercial drunk driving violations.) The bill would amend the definition of "prior conviction" so that it not only included all of the vehicle code drunk driving violations, but, in addition, would include negligent homicide, manslaughter, or murder resulting from the operation of a vehicle. Thus, any prior conviction for a drunk driving offense -- or for negligent homicide, manslaughter, or murder resulting from the operation of a vehicle -- would apply to the different OUIL, OWI, "zero tolerance," and commercial drunk driving levels and corresponding penalties, and could be used by prosecutors seeking sentence enhancements for drunk driving crimes under Section 625 of the vehicle code (which does not include commercial drunk driving). Though a "zero tolerance" violation would count toward penalty enhancement, only one "zero tolerance" violation could be used as a "prior conviction" for purposes of OUIL or OWI sentencing enhancement. (The bill also would keep the two current "zero tolerance" misdemeanors, and would not add a "zero tolerance" felony.)

Any OWI or commercial drunk driving conviction within 10 years of 2 or more prior convictions would be a felony (as is now the case with OUIL violations), with the same penalties as the current penalties for felony OUIL violations (namely, a mandatory fine of at least \$500 but not more than \$5,000 and either one to five years imprisonment under the Department of Corrections or probation with imprisonment in the county jail for at least 30 days but not more than 1 year, with at least 48 hours served consecutively). That is, the bill would change the current third-level OWI misdemeanor to a felony, and add a third, felony commercial drunk driving crime. Penalties for the two misdemeanor "zero tolerance" and the two misdemeanor commercial drunk driving offenses would not change. (There would continue to be no felony "zero tolerance" violation.)

In addition, the court could order defendants convicted of any of the drunk driving violations in Section 625

of the vehicle code to pay the costs of prosecution (currently, this does not apply to the misdemeanor crime of allowing someone to drive OUIL, nor does it apply to commercial drunk driving, which is in another section of the vehicle code).

Currently, vehicle forfeiture may be ordered for any OUIL or OWI violation. The bill would eliminate vehicle forfeiture for a first OUIL conviction, but continue to allow it for subsequent OUIL or OWI violations. In addition, vehicle immobilization (see below) could be ordered for first OUIL or OWI violations (including OUIL or OWI death or serious injury), and would be required for subsequent OUIL or OWI violations (including OUIL or OWI death or serious injury).

Finally, the current 90-day imprisonment terms for OUIL, OWI, and commercial drunk driving misdemeanors would be changed to 93 days.

IMMOBILIZATION

House Bill 4960 and House Bill 5952 would amend different sections of the Michigan Vehicle Code to add provisions regarding the immobilization of vehicles.

House Bill 5952 would add new sections to the Michigan Vehicle Code (MCL 257.904d and 257.904e) that would provide for immobilization of vehicles for certain drunk driving or driving without a license violations. Immobilization could be done by any available technology that locked the vehicle's ignition, wheels, or steering or otherwise prevented anyone (including the defendant) from operating it. If a vehicle were immobilized, the court could order it stored at a place and in a way the court considered appropriate, and could order the defendant to pay the cost of immobilizing and storing the vehicle. State law would preempt any conflicting local ordinances.

Attempts to avoid immobilization would be misdemeanors under both House Bill 5952 and House Bill 4960. House Bill 5952 would prohibit and make it a misdemeanor punishable by imprisonment for up to 93 days or a fine of up to \$100, or both, (a) for defendants whose vehicles had been immobilized to buy, lease, or otherwise obtain a vehicle during the immobilization period without court approval, or (b) for anyone who knew (or had reason to know) that a vehicle had been immobilized to remove or bypass (or attempt to do so) court-ordered immobilization devices or to drive (or attempt to drive) the immobilized vehicle. House Bill 4960 would prohibit and make it a misdemeanor punishable by imprisonment for up to one year or a fine of up to \$1,000, or both, either (a) to transfer (or attempt to transfer) ownership or

possession of a vehicle with a temporary license plate, a vehicle subject to immobilization, or an immobilized vehicle; or (b) to buy or lease another vehicle or an interest in another vehicle, with the intent to avoid immobilization.

Immobilized vehicles also couldn't be sold or turned over to family members without a court order. Under House Bill 5952, immobilized vehicles could be sold during the period of immobilization, but not to members of the defendant's family ("to a person exempt from paying a use tax") without court approval. Similarly, House Bill 4960 would allow the return of a leased vehicle to a lessor, but would require a court order to transfer a vehicle subject to immobilization -- or a temporary license plate -- or to assign the title or an interest in such a vehicle to a family member ("a person exempt from paying a use tax").

Under House Bill 5952, immobilization of a vehicle would be ordered by the court as follows:

** Up to 14 days for death or serious injury as a result of OUIL or OWI or for a first OUIL or OWI;

** Mandatory, nonsuspendable 14 days for a (misdemeanor) OUIL or OWI conviction within 7 years of a prior conviction or for driving without a license with one prior suspension, revocation, or denial, or any combination of 2 prior suspensions, revocations, or denials within 7 years;

** Mandatory, nonsuspendable 180 days for a felony OUIL or OWI conviction (that is, an OUIL or OWI conviction within 10 years of 2 or more prior convictions) or for driving without a license for any combination of 3 or more prior suspensions, revocation, or denials within 7 years.

The defendant would have to provide the court with the vehicle identification number (VIN) and registration plate number of the vehicle involved in the violation. The court could not order vehicle immobilization if the defendant was not the owner or lessee of the vehicle operated during the violation, unless the owner or lessee knowingly let someone drive the vehicle while under the influence (that is, OUIL) or while the driver was operating without a license (DWLS). If a defendant were ordered imprisoned for the violation for which the vehicle was ordered immobilized, the period of immobilization would begin at the end of the period of imprisonment.

The immobilization provisions of House Bill 5952 would not apply to the following:

** A license suspension, revocation, or denial based on a violation of the Support and Parenting Time Enforcement Act (that is, failure to pay child support);

** An individual who had no currently effective license suspension or denial for failure to answer a citation, notice to appear in court, or to comply with an order or judgment, or who had one currently effective suspension or denial but who had never violated a condition of that suspension or denial and had no other suspensions or revocations or denials under the vehicle code;

** Rental vehicles or vehicles registered in another state; and

** Most non-moving violations of the vehicle code (including violations of Chapters 2 or 5 of the vehicle code -- Chapter 2 includes provisions regarding applications for registration, transfers of titles or interest, permits to nonresident owners, dealer and wrecker licenses, and special anti-theft laws, while Chapter 5 is the financial responsibility act -- violations for failure to change address; parking, bad check, or equipment violations; and pedestrian, passenger, or bicycle violations (other than a violation of the Michigan Liquor Control Code of 1998 prohibitions against minors buying, consuming, or possessing alcohol, using fake identification to buy alcohol, or providing minors with fake identification).

FORFEITURE

Currently, the Michigan Vehicle Code allows the forfeiture of a vehicle after a conviction for OUIL or two or more convictions of OWI. It is a felony, punishable by imprisonment for up to four years and a fine of up to \$2,000 (or both), to knowingly conceal or transfer a vehicle with the intent to avoid forfeiture. House Bill 4959 would amend the vehicle code (MCL 257.625n) to remove provisions allowing the forfeiture of a vehicle after a first conviction for OUIL and instead would allow forfeiture for two or more OUIL or OWI convictions, and would reduce the current penalty for attempting to avoid forfeiture from a four-year felony with a \$2,000 fine to a misdemeanor, punishable by imprisonment for up to one year and a fine of up to \$1,000, or both. In addition, the bill would require the court to hold a hearing within 21 days after expiration of the period for filing claims of interest in a vehicle subject to forfeiture only if a claim were filed; if no claim were filed, the court would be required to order the vehicle forfeited or returned to the lessor. The bill also would add new provisions specifying that failure to comply with the code's time limits would not preclude the court from ordering forfeiture of a vehicle or its return to a lessor, unless

the court found that the owner or claimant suffered substantial prejudice as a result of the failure. Finally, the bill would add that the forfeiture provisions of this section of the vehicle code would not preclude the prosecuting attorney from pursuing forfeiture proceedings under any other state law or local ordinance substantially corresponding to this section of the code.

CONFISCATION OF LICENSE PLATES

House Bill 4960 would amend the Michigan Vehicle Code (MCL 257.219 and 257.233) to require peace officers to immediately confiscate a vehicle's license plate and issue a temporary license plate, valid for 100 days unless extended by the court, if the peace officer stopped the driver for violating a state law or local ordinance that allowed or required the immobilization or forfeiture of the vehicle (namely, drunk driving offenses). The peace officer also would have to notify the secretary of state through the Law Enforcement Information Network (LEIN) that the registration plate had been confiscated and destroyed and a temporary plate had been issued. House Bill 4961 would require that the secretary of state keep records of which vehicles had been assigned a temporary license plate or had been immobilized.

REMOVE LICENSE SANCTIONS FROM COURT JURISDICTION

Currently, both the secretary of state and the courts may order license sanctions. House Bills 4959, 4953, 4954, and 4955 would eliminate references to license actions imposed under court order, thereby establishing the secretary of state as the sole authority for licensing actions.

House Bill 4959 would amend the Michigan Vehicle Code (MCL 257.602a, 257.624a, and 257.624b) to eliminate court-ordered license suspensions for "fleeing and eluding" (that is, refusing to stop one's vehicle when so ordered by a law enforcement officer), for transporting open containers of alcohol in passenger compartments of vehicles, and for minors transporting alcohol in vehicles (unless in the course of their employment).

House Bill 4953 would amend the Michigan Penal Code (MCL 750.367c, 750.382, and 750.479a), which allows license suspensions for stealing motor fuel by pumping it into a motor vehicle or for maliciously destroying plants or soil by means of a vehicle, and which requires license suspensions or revocations for "fleeing and eluding" in a vehicle. The bill would eliminate references to court-ordered license suspensions or revocations in these sections and instead

would require the secretary of state to suspend or revoke drivers' licenses for these offenses.

House Bill 5954 would amend the felonious driving act (Public Act 314 of 1931) to remove reference to the court recommending to the secretary of state the suspension of the driver's or chauffeur's license of anyone convicted under the act for felonious driving (driving "carelessly and heedlessly in wilful and wanton disregard of the rights of safety of others, or without due caution and circumspection and at a speed or in a manner so as to endanger or be likely to endanger any person or property and thereby injuring so as to cripple any person, but not causing death"). Instead, under the bill, the secretary of state would suspend (in accordance with Section 319 of the Michigan Vehicle Code, which mandates license suspensions for convictions of certain crimes) the license of someone convicted of a violation or an attempted violation of the felonious driving act.

House Bill 5955 would amend the Liquor Control Code of 1998 (MCL 436.1703) to remove references to court-order license sanctions imposed (a) on minors who violated the liquor code's prohibitions against minors buying, consuming, or possession alcohol, or (b) for furnishing fake identification to minors who use the identification to buy alcohol.

LICENSE SANCTIONS

License sanctions would become the exclusive domain of the secretary of state. The bills would amend a number of vehicle code sections regarding the issuance of registrations and licenses, and various license actions, as follows.

Effective January 1, 2000, House Bill 4960 would amend the vehicle code (MCL 257.219) to add to the grounds upon which the secretary of state is to refuse to issue or transfer a registration the fact that the owner's or lessee's license had been suspended, revoked, or denied at the time of the application for a violation of the vehicle code or he or she had never been licensed by Michigan after his or her license had been suspended, revoked, or denied for a second or subsequent violation of the vehicle code's drunk driving provisions or its driving with license suspended provisions. The bill also would require the secretary of state to refuse to issue a certificate of title or a salvage certificate of title on the same grounds.

House Bill 4961 would amend the vehicle code (MCL 257.904) provisions regarding driving with a suspended license (DWLS) to require the secretary of state to immediately impose an additional 14-day license suspension or denial upon receiving a record of

someone's conviction or civil infraction determination for the unlawful operation of a motor vehicle or a moving violation while the person's license was expired for at least 60 days, indefinitely suspended, or whose application for a license had been denied. If someone was convicted of a second or subsequent DWLS offense, the court would be required to immobilize the person's vehicle. The bill's provisions would not apply to someone who had a currently effective suspension or denial for failure to answer a citation or notice to appear in court or who failed to comply with a court order or judgment (including paying all fines, costs, fees, and assessments), and who had never been convicted of or received a civil infraction determination for a violation that occurred during that suspension or denial.

House Bill 4959 would amend the vehicle code (MCL 257.303) to add to the list of conditions under which the secretary of state could not issue a license and to the conditions under which he or she would be required to revoke a license, and to include impaired (OWI) and commercial drunk driving as drunk driving offenses for the purposes of license revocation.

The secretary of state would be prohibited from issuing a license to someone who had failed to answer a citation or notice to appear in court or who failed to comply with a court order or judgment (including paying all fines, costs, fees, and assessments), until he or she answered the citation or notice to appear in court or complied with the court order or judgment.

Currently, the secretary of state is prohibited from issuing a license to a person who is a "habitual violator of the criminal laws" relating to operating a vehicle while impaired by or under the influence of intoxicating liquor or drugs. The bill would add the following to the list of drunk driving violations for which convictions are prima facie evidence that someone was an habitual violator: impaired (OWI) driving, commercial drunk driving, and negligent homicide, manslaughter, or murder resulting from the operation of a vehicle, as well as a combination of one "zero tolerance" conviction and other drunk driving violations (one other within 7 years or 2 others within 10 years).

The bill would require the secretary of state to revoke the license of anyone with any combination of either (a) 2 drunk driving convictions within 7 years or a combination of one "zero tolerance" conviction and one other drunk driving conviction, or (b) 3 drunk driving convictions within 10 years or a combination of one "zero tolerance" conviction and any combination of 2 drunk driving convictions within 10 years.

House Bill 5951 and House Bill 5952 would amend vehicle code provisions regarding license suspensions. House Bill 5951 would amend the vehicle code (MCL 257.319), among other things, to establish specific periods for license suspensions for various violations. Currently, the vehicle code requires the secretary of state to immediately suspend someone's license for not less than 90 days or more than 2 years upon receiving a record of the person's conviction for a list of crimes (or attempts to commit the listed crimes). The bill would instead require the secretary of state to immediately suspend someone's license for the following periods of time upon receiving a record of the person's conviction for the following crimes:

** One year for: auto theft, felonious driving, failure to stop a serious injury accident, or fleeing and eluding (with a restricted license allowed after the first 180 days for fleeing and eluding only);

** 90 days for: failure to stop at an injury accident, reckless driving, malicious destruction of property with a vehicle, theft of fuel from a vehicle, and furnishing fake identification to a minor or a minor using fake identification to buy alcohol.

In addition, for certain offenses -- perjury, joy-riding, underage drinking, a minor transporting alcohol in a vehicle, or open intoxicants in a vehicle -- if there are no prior convictions for that offense within 7 years, the bill would provide for a 90-day suspension; if there were one or more prior convictions for the offense within 7 years, the suspension would be for one year. For underage drinking, transporting alcohol in a vehicle, or open intoxicants in a vehicle, a restricted license would be allowed after the first 30 days of a 90-day suspension, and after the first 60 days of a one-year suspension.

There would be a 90-day suspension for a violation of operating while impaired (OUIL) if the person had no prior convictions within 7 years, and the secretary of state could issue a restricted license during all but the first 30 days of the suspension. Somewhat confusingly, the bill would provide both a 90-day and a 180-day suspension for operating while impaired (OWI) if the person had no prior convictions within 7 years, with the possibility of a restricted license for all or part of the suspension. For a "zero tolerance" violation with no prior convictions within 7 years, the license suspension would be for 30 days, with the possibility of a restricted license. If the person had one or more prior convictions within 7 years, the suspension for a "zero tolerance" violation would be 90 days.

The bill would prohibit the secretary of state from issuing a restricted license under this section of the

vehicle code unless specifically authorized to do so and unless the person was otherwise eligible for a license. The bill would prohibit the secretary of state from issuing a restricted license to someone who had their license suspended for a drunk driving violation that would permit the person to operate a commercial motor vehicle that hauled hazardous material.

Restricted licenses issued under the bill would permit driving (a) in the course of the person's employment or occupation, or (b) between any of the following destinations: the person's residence, his or her work location, a court-ordered alcohol or drug education or treatment program, the court probation department, a court-ordered community service program, an educational institution at which the person was enrolled as a student, a place of regularly occurring medical treatment for a serious condition for either the person or for a member of his or her household or immediate family, or to and from the person's residence and an ignition interlock monitoring site (if an ignition interlock device was installed on his or her vehicle). In addition, a person driving on a restricted license would be required to carry, while driving, proof of his or her destination and the hours of any employment, class, or other reason for traveling.

House Bill 5951 also would amend the vehicle code's provisions regarding the suspension or revocation of group vehicle designations (MCL 257.319b) to include requiring revocation for violations or attempted violations of death or serious injury caused while the driver was under the influence (OUIL) or was impaired (OWI) while driving a commercial motor vehicle, and for negligent homicide, manslaughter, or murder resulting from the operation of a commercial motor vehicle. The bill also would add to the list of violations, any combination of 2 or more, which would result in revocation of a vehicle group designation, (a) negligent homicide, manslaughter, or murder resulting from the operation of a commercial motor vehicle, and (b) felony commercial drunk driving.

APPEALS OF LICENSE ACTIONS

Currently, if the secretary of state suspends or revokes someone's license or denies an application for a license, or takes some other license action, the "aggrieved" person can appeal to a hearing officer appointed by the secretary of state. House Bill 4959 would amend the code's administrative appeals provisions to require that a verbatim record be made of the hearing and that the hearing officer include his or her findings of fact and conclusions in the hearing record.

Except in certain cases, if someone's application for a license, a vehicle group designation, or an indorsement on a license is denied, or if his or her license, vehicle group designation, or an indorsement (such as for a motorcycle) is revoked, suspended, or restricted, he or she can appeal to the circuit court, which generally may take testimony and examine all of the facts and circumstances relating to the license denial, suspension, restriction, or revocation. Judicial appeals are not allowed in cases where the denial, revocation, suspension, or restriction is imposed under a suspension for failing to pay a citation, nor in cases where a court order is issued as part of the sentence for a conviction under the code's drunk driving prohibitions (including drunk driving under a commercial driver's license) or under the Public Health Code's controlled substances or androgenic anabolic steroid provisions.

Court reviews of license actions currently are confined to reviews of the record in certain cases when a license is denied or revoked (for example, for OUIL death or serious injury, negligent homicide, manslaughter, murder, or "habitual" offenders). The bill would limit all judicial reviews of denials, suspensions, restrictions, and revocations under the vehicle code to a review of the record.

"the effect and impact" of the 1998 legislative package and report its findings to the governor and the legislature by October 1, 2002 (replacing a similar

LICENSE REINSTATEMENT

House Bill 4959 also would amend the Michigan Vehicle Code (MCL 257.303) to require someone whose license had been denied for habitual violations to prove to the secretary of state by "clear and convincing" evidence that he or she could drive safely. More specifically, the bill would require a habitual offender (whether for alcohol-related driving offenses, reckless driving, or criminal offenses) who appealed the denial of a license to rebut the presumption resulting from the prima facie evidence by clear and convincing evidence.

SPECIFY MISDEMEANOR PENALTIES

Misdemeanor penalties of 93 days imprisonment, a fine of up to \$100, or both, would be added by House Bill 4960 for a misdemeanor violation of the vehicle code's requirements for applications for new registration certificates by assigned holders of registration plates; by House Bill 5952 for failing to answer a citation or a notice to appear in court for a violation reportable to the secretary of state (which include most non-moving violations and passenger violations except for underage drinking violations); and by House Bill 5955 for the misdemeanor crime (under the Michigan Liquor Control Code of 1998) of furnishing a minor with fake identification to buy alcohol.

MICHIGAN ANNUAL DRUNK DRIVING AUDIT

House Bill 5956 would amend the Michigan Vehicle Code (MCL 257.625i) require that the information compiled by the secretary of state for the state police report include both the number of vehicles ordered immobilized and the number of vehicles ordered forfeited, and would separately require the secretary of state to include in this compilation the number of licenses suspended, revoked, or restricted (this information currently is done on the basis of dispositions of drunk driving charges by each judge in the state). In addition, the bill would extend to July 1 (from the current June 1) the deadline by which the report must be submitted annually (to the governor, the Secretary of the Senate, the Clerk of the House of Representatives, and the secretary of state), would replace the word "accident" with the word "collisions" (when referring to the number of alcohol related motor vehicle accidents), and would require the secretary of state to enter into a contract with the University of Michigan Transportation Research Institute to evaluate

requirement for the 1991 changes to the drunk driving laws).

FISCAL IMPLICATIONS:

Fiscal information is not available. (6-29-98)

ARGUMENTS:

For:

As testimony before the House Judiciary Committee amply illustrated, the problem of chronically drunk drivers, or drivers who continue to drive even when their licenses have been suspended because of poor driving performance (often because of alcohol), continues to result in the deaths of innocent people despite repeated efforts in recent years to address this issue legislatively. The bills would once again attempt to tackle this problem by increasing the penalties for repeat drunk driving offenses, including adding felony violations for driving while impaired and for commercial drunk driving when the driver had prior drunk driving convictions. Virtually all drunk driving offenses would qualify as a "prior conviction" both for increasing penalties for drunk driving convictions and for sentencing enhancements of such convictions. Perhaps even more effectively, however, the bills would put into place mechanisms for immobilizing the vehicles of these dangerous drunk drivers, thereby deterring the dangerous behavior rather than just punishing it once it has caused irreparable harm to others. Reportedly, even though courts currently have the ability to confiscate the vehicles of drivers convicted of a first offense for driving while impaired, they are not doing so. As a result, these drivers are not deprived of the use of their vehicles and continue to drink and drive. The bills, by providing for immobilization (such as with a "boot" in the owner's driveway) of the vehicles of repeat offenders, could provide a very effective way of getting the cars of drunk drivers off the road, and one which the courts would -- and in some cases, would have to -- use.

According to the Department of State, approximately five percent -- or 350,000 -- of Michigan's seven million drivers have their licenses suspended or revoked every year, with a reported 81,933 traffic convictions of people driving with suspended licenses. Although the majority of these suspensions and revocations are for failing to appear in court (FAC) or to pay tickets ("failure to comply with judgment," or FCJ), nevertheless an estimated 135,000 suspensions or revocations were related to traffic-safety (that is, driver performance). These habitually unsafe drivers simply should not be on the roads, posing potential threats to the residents of the state. The bills would not only increase penalties for driving with a suspended license (DWLS), they also would allow or require the

immobilization and forfeiture of the vehicles driven by these dangerous drivers.

The only truly effective way to deal with chronically alcohol-impaired drivers or drivers who continue to drive with suspended or revoked licenses is to take them -- or their vehicles -- off the road, rather than simply imposing criminal penalties after they kill or maim innocent bystanders. The bills constitute a sensible combination of providing tougher penalties for habitually dangerous drivers with ways of confiscating or immobilizing their vehicles, without stigmatizing innocent family members.

Against:

Some people argue that in addition to immobilization and confiscation of repeat offenders' vehicles, an effective approach to discouraging people from drinking and driving or driving without a license would be to issue special license plates that at least would immediately identify the vehicles as belonging to these potentially dangerous drivers. Such "scarlet plates" not only would alert other drivers of the presence on the road of a dangerous driver but also would allow the police to more closely monitor such drivers and the use of such vehicles. This is the kind of approach that is being advocated by some legislators and by the secretary of state, who propose to allow the courts to order the vehicles of people who had been stopped while driving with a suspended or revoked license or with a prior record of alcohol-related driving offenses to be given specially colored or marked license plates that would allow family members to drive the vehicle but not the suspended or chronically drunk driver do so.

Response:

Putting a figurative "scarlet letter" on the vehicles of repeat drunk drivers or drivers who continue to drive when their licenses have been suspended or revoked would violate a fundamental tenet of law by indiscriminately punishing innocent family members along with guilty offenders. Anyone driving a car with specially colored or marked license plates would, in effect, be involuntarily advertising that they lived with or were related to a drunk driver or a scofflaw. Why should the relatives of such drivers be subjected to potential public ridicule and possible police harassment for merely driving the vehicle of such drivers? As those in the minority community will attest, being a member of a minority group itself can be enough "reason" for some in the law enforcement community to stop and harass them while driving. Special license plates would simply serve to increase the likelihood of such harassment for innocent people. The bills instead would provide a combination of allowing the confiscation of the license plates for certain violations,

and the issuance of a temporary plate, plus allowing or requiring immobilization of the vehicles of repeat offenders.

POSITIONS:

The Department of State supports the bills. (6-23-98)

MADD (Mothers Against Drunk Driving) Michigan supports the bills. (6-23-98)

The Department of State Police indicated support for the bills. (6-23-98)

Analyst: S. Ekstrom

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.