

Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

SFA**BILL ANALYSIS**

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

House Bill 5549 (Substitute S-1 as reported)
Sponsor: Representative Valde Garcia
House Committee: Transportation
Senate Committee: Transportation and Tourism

Date Completed: 11-13-00

RATIONALE

Drivers on Michigan's roadways often encounter trucks or passenger vehicles and emergency vehicles parked on the shoulder of a road while police officers, fire fighters, or other emergency personnel attend to the motorists. For example, a police officer may pull a driver off the road, park his or her patrol car behind the driver's car, leave the patrol car, and stand next to the motorist's car while issuing a ticket. Under these conditions, law enforcement and emergency personnel can be endangered as motorists drive in close proximity to the parked vehicles. For example, an accident on January 25, 2000, claimed the life of an 18-year veteran of the DeWitt Township police force who was struck by a semi-truck and killed while on a routine traffic stop along US-27 near the I-69 overpass. Apparently, the truck driver first hit the patrol car and then the officer who was standing next to the motorist's vehicle. Some people believe that the Michigan Vehicle Code should include provisions regulating how motorists are to proceed when driving by emergency vehicles that are parked along the side of a road.

CONTENT

The bill would amend the Michigan Vehicle Code to establish requirements for drivers approaching and passing a stationary emergency vehicle under certain conditions; and establish a misdemeanor penalty for a violation of the bill, as well as felony penalties for violations that injured or killed a police officer, fire fighter, or other emergency personnel.

Penalties

Except as provided below, a person who violated the bill would be guilty of a misdemeanor punishable by a fine of not more than \$500 and/or imprisonment for up to 90 days.

Driving Requirements

The bill provides that, upon approaching and passing a stationary authorized emergency vehicle that was giving a visual signal by means of flashing, rotating, or oscillating red, blue, or white lights as permitted under the Code, the driver of an approaching vehicle would have to exhibit due care and caution, as described below.

On any public roadway with at least two adjacent lanes proceeding in the direction of the stationary authorized emergency vehicle, the driver of the approaching vehicle would have to proceed with caution and yield the right-of-way by moving into a lane at least one moving lane or two vehicle widths apart from the emergency vehicle, unless directed otherwise by a police officer. If movement to an adjacent lane or two vehicle widths apart were not possible due to weather, road conditions, or the immediate presence of vehicular or pedestrian traffic in parallel moving lanes, the driver would have to proceed as follows.

On any public roadway that did not have at least two adjacent lanes proceeding in the same direction as the stationary authorized emergency vehicle, or if the movement by the driver into an adjacent lane or two vehicle widths apart were not possible, as described above, the approaching vehicle would have to reduce and maintain a safe speed for weather, road conditions, and vehicular or pedestrian traffic and proceed with due care and caution, or as directed by a police officer.

A person who violated the bill and caused injury to a police officer, fire fighter, or other emergency response personnel in the immediate area of the stationary authorized emergency vehicle, would be guilty of a felony punishable by a fine of up to \$1,000 and/or imprisonment for up to two years.

A person who violated the bill and caused the death of a police officer, fire fighter, or other emergency response personnel in the immediate area of the stationary authorized emergency vehicle, would be guilty of a felony punishable by a maximum fine of \$7,500 and/or imprisonment for up to 15 years. If the person were under the influence of, or impaired by, intoxicating liquor or a controlled substance or a combination of the two at the time of the violation, it would be punishable by imprisonment for life or any term of years.

Proposed MCL 257.653a

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 Michigan Vehicle Code requires a driver of a nonemergency vehicle to yield the right-of-way to an approaching emergency vehicle that has at least one red or blue light that is flashing, rotating, or oscillating and is visible under normal atmospheric conditions for at least 500 feet and when the emergency vehicle's siren, exhaust whistle, or bell is audible. In addition, the driver is required to drive to a position that is parallel to and as close as possible to the right-hand edge or curb of the road, clear of an intersection. The driver also must stop and remain in that position until the emergency vehicle has passed or until otherwise directed by a police officer. The Code, however, does not provide similar regulations for motorists driving by emergency vehicles parked on the side of a road in response to an accident or for a routine traffic stop. While it is common sense for motorists to drive with caution in these situations, senseless deaths and unnecessary injuries to emergency personnel can occur when motorists fail to avoid hazards at the side of the road. By establishing procedures for motorists to follow when driving by emergency vehicles parked beside a roadway, the bill would help to educate motorists about potential hazards and measures they should take to avoid accidents that cause death and injury to law enforcement and emergency personnel. As a result, the bill would serve to protect the individuals who provide essential services to the public.

Supporting Argument

When a driver proceeds without adequate caution and causes the death of another person, law enforcement officials can charge the driver under the Michigan Penal Code with negligent homicide, which is misdemeanor punishable by imprisonment for up to two years and/or a maximum fine of \$2,000 (MCL

750.324), or manslaughter, which is a felony punishable by imprisonment for up to 15 years and/or a fine of \$7,500 (MCL 750.321). Some contend that the standard of proof for manslaughter is very high, and prosecutors often do not have the necessary evidence to bring a case proving the more serious crime. In the case of the DeWitt Township police officer, for example, the driver of the semi-truck evidently was charged with negligent homicide and sentenced to 90 days in jail for striking the officer. The bill would establish appropriate penalties for drivers who cause the death of a police officer, fire fighter, or other emergency response personnel.

Response: The bill should apply not only to police officers, fire fighters, and emergency personnel but also to other public employees who work along roadways in the State, such as employees of county road commissions.

Opposing Argument

The bill would require drivers who approached a stationary emergency vehicle along a roadside to yield the right-of-way and move at least one lane or two vehicle widths apart from the emergency vehicle when the road had at least two adjacent lanes proceeding in the direction of the parked emergency vehicle. The bill, however, does not define "vehicle width", and the size of vehicles varies greatly. Consequently, there is concern that police officers would have too much discretion in determining whether a driver yielded the right-of-way and allowed sufficient space to avoid the emergency vehicle. Given the uncertainty about this requirement, police officers could use it to pull motorists over when a stop was unwarranted. In addition, some police officers have been trained to park their vehicles along the right edge of the right lane, known as the "fog line", and to position their car at an angle when stopping on the shoulder of a road. This practice can create a hazard because the patrol car is parked close to approaching traffic and police officers often step into the traffic lane when entering or exiting the patrol car. Under these circumstances, it would be difficult for motorists to comply with the bill's right-of-way requirements.

Response: If a road had two adjacent lanes proceeding in the same direction, the bill would require the approaching driver to move into a lane that was at least one lane apart from the emergency vehicle. Thus, a driver could move into the adjacent lane to comply with the bill. If a driver could not move into an adjacent lane or at least two vehicle widths apart, then he or she would have to reduce the vehicle's speed and proceed with care. Motorists therefore would have other options to avoid a potentially hazardous situation.

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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.

Legislative Analyst: L. Arasim

FISCAL IMPACT

The bill would have an indeterminate fiscal impact on State and local government. There are no data available to indicate how many people could be convicted of not properly passing a stationary emergency vehicle. A violation would result in a misdemeanor charge for which local units of government would incur the costs of incarceration or receive the fine revenue.

However, if the offender harmed or killed emergency personnel, the offense would be a felony with increasingly longer maximum penalties. Given that there are no data to indicate the minimum penalty, if one assumed that five people a year would be convicted of each of these offenses and that they would be committed to and serve a prison term equal to two-thirds of the maximum sentence, then the cost of incarceration for the State would be \$4 million.

Additionally, if an offender killed emergency personnel while intoxicated, the maximum penalty would be life. Assuming that a life sentence is equal to 25 years of incarceration, the cost of incarceration for the State would be \$550,000 per offender convicted of this offense and sentenced to a life term.

Fiscal Analyst: K. Firestone