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Senate Bill 469 (Substitute S-2 as passed by the Senate)  
Senate Bill 470 (as passed by the Senate)  
Sponsor: Senator Loren Bennett  
Committee: Judiciary

Date Completed: 8-22-01

### **RATIONALE**

Under the Michigan Vehicle Code, a driver who has been involved in an accident that seriously injured or killed another person is required to stay at the scene of the accident until he or she has given certain information to a police officer or someone else involved in the accident, and to help an injured person. A violation is a felony punishable by imprisonment for up to five years, a maximum fine of \$5,000, or both. The Code prescribes a more severe penalty, however, for causing a serious injury or death by driving while under the influence of, or while impaired by, alcohol and/or drugs. It has been suggested that the lighter penalty for leaving the scene of a serious accident might inadvertently provide a motivation for a driver who has been drinking to leave the scene and get sober rather than face the harsher penalty for causing a death or serious injury while driving drunk. Some people believe that the penalty for leaving the scene of an accident involving death or serious injury should be consistent with that for drunk driving causing a death or serious impairment of a body function.

In addition, some aspects of the Vehicle Code's provisions requiring license denial and license revocation are duplicative, and the violations that trigger revocation are arranged in a manner that some find confusing. Some people believe that the revocation and denial provisions should be combined and that similar types of offenses should be grouped for purposes of requiring driver's license revocation.

Further, since 1997, the State has collected a \$1 service fee from applicants for driver's licenses. Revenue from that fee is used to cover the cost of including a magnetic

information strip on the back of driver's licenses, which was authorized by 1996 legislation. Authorization for collecting the service fee is scheduled to expire on January 1, 2002. To retain this funding source, it has been suggested that the fee's sunset should be eliminated.

### **CONTENT**

**Senate Bill 469 (S-2) would amend the Michigan Vehicle Code to do the following:**

- **Revise the penalty for failure to stop at the scene of an accident resulting in injury and increase the penalty for failure to stop at the scene of an accident resulting in death.**
- **Revise the provision that requires license revocation for committing certain offenses or combinations of offenses committed within seven or 10 years; and require the revocation, rather than suspension, of a violator's driver's license for leaving the scene of an accident resulting in injury or death.**
- **Remove the January 1, 2002, sunset on the \$1 license application service fee.**
- **Delete references to juvenile dispositions and prima facie evidence in license denial requirements.**

**Senate Bill 470 would amend the sentencing guidelines provisions in the Code of Criminal Procedure to reflect the proposed penalty for failure to stop at the scene of an accident resulting in death. The bill is tie-barred to Senate Bill 469.**

## **Senate Bill 469 (S-2)**

### **Failure to Stop**

**Criminal Penalty.** Under the Michigan Vehicle Code, a driver who knows or has reason to believe that he or she has been involved in an accident resulting in serious or aggravated injury to or death of a person, must immediately stop at the scene of the accident and remain there until the requirements of Section 619 of the Code are fulfilled. (Section 619 requires the driver to give his or her name and address and the vehicle's registration number, and show his or her driver license, to a police officer, the person struck, or the driver or occupants of a vehicle that was hit, and to assist an injured person in securing medical aid or transportation.)

Under the bill, these requirements would apply if the accident resulted in serious impairment of a body function (rather than serious or aggravated injury) or death. The penalty would be imprisonment for up to five years, a fine of at least \$1,000 but not more than \$5,000, or both, if the accident resulted in serious impairment of a body function. If the accident resulted in death, the offense would be punishable by imprisonment for up to 15 years, a fine of at least \$2,500 but not more than \$10,000, or both.

"Serious impairment of a body function" would include one or more of the following:

- Loss of, or loss of the use of, a limb, foot, hand, finger, thumb, eye, or ear.
- Loss or substantial impairment of a bodily function.
- Serious visible disfigurement.
- A comatose state lasting for more than three days.
- Measurable brain or mental impairment.
- A skull fracture or other serious bone fracture.
- Subdural hemorrhage or subdural hematoma.

**License Revocation.** Currently, if a driver fails to stop at the scene of an accident resulting in serious injury or death, the Secretary of State must suspend the person's operator's or chauffeur's license for one year. The bill, instead, would require the Secretary of State to revoke and deny issuance of a driver's license upon one conviction for a failure-to-

stop violation or attempted violation and upon multiple convictions within seven years, as described below.

### **License Revocation Revisions**

The Vehicle Code includes separate provisions under which the Secretary of State may not issue a driver's license to certain people and must revoke the license of some drivers. The bill would delete some of the conditions for denial of a license that duplicate conditions for revocation, and would change the revocation provision to a requirement that the Secretary of State revoke and deny issuance of a license.

In addition, the bill would revise the violations and combinations of violations that require license revocation. The bill would add some offenses to that provision and would regroup some of the violations that currently require license revocation.

**One Conviction.** Currently, license revocation is required for one conviction of drunk driving causing death or serious impairment; unlawful passing of an emergency vehicle causing the death of a police officer, firefighter, or other emergency response personnel; driving without a license and causing death or serious impairment; first- or second-degree fleeing and eluding; or negligent homicide, manslaughter, or murder resulting from the operation of a motor vehicle. The bill would add to that list one conviction for failure to stop at an accident that resulted in death or serious impairment and unlawful passing of an emergency vehicle that resulted in injury to emergency response personnel.

**Two Convictions within Seven Years.** Currently, the Code requires license revocation for: 1) any combination of two convictions within seven years for reckless driving or unlawful passing of an emergency vehicle causing injury to emergency response personnel; 2) two convictions of a felony in which a motor vehicle was used within seven years; or 3) any combination of two convictions within seven years for operating a vehicle while under the influence of liquor and/or drugs (OUIL), operating a vehicle while impaired by liquor and/or drugs (OWI), drunk driving causing death or serious impairment, drunk driving with a passenger under 16 years old, unlawful passing of an emergency vehicle

causing the death of emergency response personnel, driving without a license and causing death or serious impairment, drunk driving of a commercial vehicle, or negligent homicide, manslaughter, or murder resulting from the operation of a motor vehicle, or one of those convictions and one conviction for operation of a vehicle by a person under 21 with any bodily alcohol content (a "zero tolerance" violation).

The bill would revise those three categories. Under the bill, revocation and denial of a license would be required for: 1) two convictions within seven years for reckless driving; 2) any combination of two or more convictions within seven years for a felony in which a motor vehicle was used, first- or second-degree fleeing and eluding, failure to stop at an accident that resulted in death or serious impairment, unlawful passing of an emergency vehicle resulting in death or injury to emergency response personnel, driving without a license and causing death or serious impairment, or negligent homicide, manslaughter, or murder resulting from the operation of a motor vehicle; and 3) any combination of two convictions within seven years for OUIL, OWI, drunk driving causing death or serious impairment, drunk driving with a passenger under 16, or drunk driving of a commercial vehicle, or one of those convictions and one zero tolerance violation within seven years.

Three Convictions within 10 Years. Currently, the Code requires license revocation for any combination of three convictions within 10 years for OUIL, OWI, drunk driving causing death or serious impairment, drunk driving with a passenger under 16, unlawful passing of an emergency vehicle causing the death of emergency response personnel, driving without a license and causing death or serious impairment, drunk driving of a commercial vehicle, or negligent homicide, manslaughter, or murder resulting from the operation of a motor vehicle, or any combination of two of those convictions and one zero tolerance violation within 10 years. The bill would remove from that list unlawful passing causing the death of emergency response personnel, driving without a license causing death or serious impairment, and negligent homicide, manslaughter, or murder resulting from the operation of a motor vehicle.

(Note: Public Act 103 of 2001 (Senate Bill 373) amends these license revocation provisions to make revisions similar to those proposed by Senate Bill 469 (S-2). Public Act 103, which will take effect on October 1, 2001, also prescribes felony penalties for committing a moving violation that injures or kills a person working in a construction zone area or a farmer operating a farm implement on a highway.)

#### Juvenile Dispositions; Habitual Offenders

The Code prohibits the Secretary of State from issuing a license to particular individuals, including a person who has been convicted of or received a juvenile disposition for OUIL or OWI resulting in death or serious impairment; unlawfully passing a stationary emergency vehicle and killing a police officer, fire fighter, or other emergency personnel; driving without a license and causing death or serious impairment; or negligent homicide, manslaughter, or murder resulting from the operation of a vehicle. Under the bill, the Secretary of State still would be required to deny a license upon receiving the appropriate records of conviction. The bill, however, would omit reference to a juvenile disposition.

The Code also prohibits the Secretary of State from issuing a license to a person who is a habitual violator of the criminal laws relating to OUIL, OWI, or driving with an unlawful bodily alcohol content; a person who is a habitually reckless driver; or a person who is a habitual criminal. The Code provides that certain repeat offenses or combinations of offenses within seven or 10 years are prima facie evidence that a person is a habitual violator or a habitually reckless driver, and two convictions of a felony in which a motor vehicle was used are prima facie evidence that a person is a habitual criminal. Under the bill, the Secretary of State still would be required to deny a license upon receiving the appropriate records of conviction. The bill, however, would omit references to a habitual violator, habitual criminal, or habitually reckless driver, and references to prima facie evidence.

Under the Code, if a person's license has been revoked, the Secretary of State may not issue a license to the person until the later of the following: the expiration of at least one year after the revocation, or the expiration of at

least five years after the date of a subsequent revocation occurring within seven years after any prior revocation. Also, if the revocation is based on prima facie evidence that the person is a habitual violator of the drunk driving laws, a habitually reckless driver, or a habitual criminal, he or she must rebut the presumption resulting from the prima facie evidence by clear and convincing evidence. Under the bill, the rebuttal requirement would apply, instead to a person whose license had been revoked and denied for multiple offenses within seven or 10 years. The person would have to rebut by clear and convincing evidence the presumption that he or she was a habitual offender. The bill specifies that the convictions that resulted in the revocation and denial of a driver's license would constitute prima facie evidence that the person was a habitual offender.

#### Application Service Fee

The Code requires that, until January 1, 2002, a \$1 service fee be added to each fee collected for an original, renewal, duplicate, or corrected operator's or chauffeur's license. The fee must be credited to the General Fund and used to defray the Secretary of State's expenses. The bill would delete the January 1, 2002, expiration date.

#### **Senate Bill 470**

Currently, failure to stop at the scene of a serious personal injury accident is a Class E offense against a person, with a statutory maximum prison term of five years. Under the bill, that classification would apply to failure to stop at the scene of an accident resulting in serious impairment. Failure to stop at the scene of an accident resulting in death would be a Class C offense against a person, with a statutory maximum of 15 years.

MCL 257.303 et al. (S.B. 469)  
777.12 (S.B. 470)

#### **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**

Causing the death of another person by the

operation of a motor vehicle while under the influence of, or while impaired by, alcohol or drugs is punishable by up to 15 years' imprisonment and/or a fine of not less than \$2,500 or more than \$10,000. Operating a motor vehicle in violation of the drunk driving laws and causing a serious impairment of a body function of another person is punishable by up to five years' imprisonment and/or a fine of not less than \$1,000 or more than \$5,000. These penalties, especially the punishment for causing a death, are more severe than the penalty for leaving the scene of an accident when the driver knows or has reason to believe that he or she has been involved in an accident resulting in serious or aggravated injury to or death of a person.

The difference in the severity of the penalties for those two offenses might actually serve as an unforeseen motivation for a drunk driver to flee the scene of a serious accident rather than report it or wait for emergency response. If a drunk driver can elude responsibility for the accident long enough to sober up, he or she may be subject only to the lighter penalty for fleeing the scene of a serious accident, rather than causing a death or serious injury by drunk driving. Testimony before the Senate Judiciary Committee illustrated this statutory shortcoming. In April 2000, a pedestrian was struck from behind and killed by a hit-and-run driver. While the driver apparently was drunk at the time of the offense, he was not identified and located for five days. Consequently, he was subject only to the lighter penalty for fleeing the scene of a serious accident, not the 15-year maximum sentence for causing a death by driving while drunk. By establishing penalties for leaving the scene of a serious accident that would be commensurate with the penalties for OUIL or OWI that causes death or serious impairment, Senate Bill 469 (S-2) would close the inadvertent loophole allowing an offender to escape a more severe penalty.

**Response:** Under the drunk driving laws, the sentence for OUIL or OWI causing death or serious impairment also may impose vehicle forfeiture, and must include vehicle immobilization if forfeiture is not ordered. In addition, a drunk driver who kills a police officer, firefighter, or other emergency response personnel is subject to up to 20 years' imprisonment and/or the specified fine if the offender also violates Section 653a of the Michigan Vehicle Code, which prescribes

requirements for using due care and caution when approaching and passing a stationary emergency vehicle. Perhaps the sentence for fleeing a serious accident should include these measures, as well.

### **Supporting Argument**

In recent years, as penalties for driving violations causing death or serious injury have been increased or established, they often have been added to the license revocation provisions of the Michigan Vehicle Code. Some of the offenses that have been included in the combinations of violations that trigger license revocation involve alcohol-related driving offenses and some do not. Apparently, this has caused confusion in regard to the steps that someone must take in order to have a license reinstated after a period of revocation or denial. According to the director of the Department of State's Driver License Appeal Division, when a person's license has been revoked for an alcohol-related driving violation, he or she must comply with certain requirements related to alcohol abuse treatment and may be required to equip his or her vehicle with an ignition locking device, which prevents the vehicle from being operated by someone who has alcohol in his or her system. Since driving violations that do not involve alcohol were combined with alcohol-related violations in the license revocation provisions, some drivers whose licenses were suspended for violations that did not involve alcohol have been required to meet the same standards for license reinstatement as imposed on motorists who lost their license for alcohol-related violations.

By regrouping driving violations that require license revocation, Senate Bill 469 (S-2) would avert this confusion, because alcohol-related offenses would be segregated from other driving violations.

### **Supporting Argument**

Public Act 205 of 1996 amended the Michigan Vehicle Code to allow certain types of information to be stored electronically on driver's licenses. The information is limited to the holder's driver's license number, birth date, license expiration date, and other information necessary for use with electronic devices, machine readers, or automatic teller machines, and may not include the person's name, address, driving record, or other personal identifiers. Pursuant to the 1996

amendments, Michigan licenses now have a magnetic strip on the back that contains the required information in an encoded form. Pursuant to Public Act 205, the Code also requires that, until January 1, 2002, a service fee of \$1 be added to each fee collected for an original, renewal, duplicate, or corrected driver's license. That service fee helps to support the cost of placing the magnetic information strip on the back of driver's licenses. By eliminating the sunset on the collection of the service fee, Senate Bill 469 (S-2) would ensure that revenue to provide the encoded information on the magnetic strip on driver's licenses continued to be available.

**Response:** Public Act 204 of 1996, which was tie-barred to Public Act 205, includes the same authorization for encoded information to be placed on State personal identification cards and requires that, until January 1, 2002, a \$1 service fee be collected from each applicant for a State identification card. That sunset also should be eliminated.

Legislative Analyst: P. Affholter

### **FISCAL IMPACT**

Senate Bills 469 (S-2) and 470 would have an indeterminate fiscal impact on State and local government for violations, and would result in additional service fee revenue.

In 1998, according to the Department of Corrections Annual Statistical Report, 45 offenders were convicted of failure to stop at the scene of an accident. There are no data available to indicate whether the personal injury resulted in serious impairment of a body function or death. Under the bill, offenders convicted of failure to stop at the scene of an accident that resulted in death would be subject to a Class C felony penalty with a minimum sentencing range from 0-11 months to 62-114 months. Other offenders would be subject to the current penalty for the offense, which is a Class E felony with a minimum sentencing range from 0-3 months to 24-38 months.

Assuming that 45 offenders a year are convicted of failing to stop at the scene of an accident, of those 10 offenders are convicted of the more serious felony, and all offenders receive the longest minimum sentence, given that the average annual cost of incarceration is \$22,000, then the costs of incarceration

would be \$4.5 million, or an increase of \$1.4 million. If offenders received the shortest sentences, costs would be incurred by local governments for incarceration or by the State for felony probation at \$4.23 per day.

According to the Department of State published report on collected fees and the number of transactions, 1,997,653 chauffeur's and operator's licenses were issued in fiscal year 1999-2000. The elimination of the sunset on the \$1 service fee collected on these applications would result in approximately \$2,000,000 in additional driver fees to produce the digitized driver licenses.

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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.