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BILL



ANALYSIS

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House Bill 5089 (as enrolled)
House Bill 5173 (as enrolled)
Sponsor: Representative Daniel Acciavatti
House Committee: Transportation
Senate Committee: Transportation

PUBLIC ACT 315 of 2003
PUBLIC ACT 314 of 2003

Date Completed: 1-26-04

RATIONALE

Public Act 103 of 2001 amended the Michigan Vehicle Code to prescribe penalties for committing a moving violation that has criminal penalties and causing an injury to or the death of a person working in a road construction zone. The Act is commonly called "Andy's Law", after a 19-year-old road worker who was left a paraplegic after being struck by a drunken driver while setting up orange construction barrels. The driver was sentenced to 45 days in jail. Under Andy's Law, an offender who injures a construction worker is subject to a fine of up to \$1,000 and up to one year's imprisonment; an offender who kills a construction worker may be fined up to \$7,500 and imprisoned for up to 15 years.

Andy's Law was first put to the test in 2003 when a woman was prosecuted for killing one construction worker and critically injuring another as they set up an electronic traffic merging sign along I-94 in Macomb County on August 9, 2002. The woman reportedly was driving 80 miles per hour in the construction zone where the speed limit was 45 miles per hour, and had no insurance, a restricted license, a previous drunk driving conviction, and four previous license suspensions. Her attorney argued that the construction zone was not clearly marked, so she did not know that she should have slowed down. He also argued that, since the workers were installing the sign before the construction barrels began, they were not technically in a construction zone. The driver was acquitted on all charges. It was suggested that this "loophole" in the law should be closed.

CONTENT

House Bills 5089 and 5173 amended the Michigan Vehicle Code to define the term "work zone" and replace various references to "construction zone" and "work area" with that term; and revise the provisions setting penalties for a person who commits a moving violation that results in injury to or the death of a person working in a construction zone.

The bills are described below in further detail.

House Bill 5089

The bill defines "work zone" as a portion of a street or highway that meets any of the following:

- Is between a "work zone begins" sign and an "end road work" sign.
- For construction, maintenance, or utility work activities conducted by a work crew and more than one moving vehicle, is between a "begin work convoy" sign and an "end work convoy" sign.
- For construction, maintenance, or utility work activities conducted by a work crew and one moving or stationary vehicle exhibiting a rotating beacon or strobe light, is between the following: a) a point that is 150 feet behind the rear of the vehicle or that is the point from which the beacon or strobe light is first visible on the street or highway behind the vehicle, whichever is closer to the vehicle; and b) a point that is 150 feet in front of the front of the vehicle or that is the point from which the beacon or strobe light is first visible on the street

or highway in front of the vehicle, whichever is closer to the vehicle.

The bill deleted a provision setting a 45-mile per hour speed limit in a designated work area where a lane or part of a lane was closed, unless the Michigan Department of Transportation (MDOT), a county road commission, or a local authority determined and posted a different speed limit. Under the bill, the speed limit is 45 miles per hour in a work zone that is between a "work zone begins" sign and an "end road work" sign, unless MDOT, a county road commission, or a local authority determines a different speed limit for that work zone.

Previously, MDOT, a county road commission, or a local authority had to identify on streets and highways under its jurisdiction a designated work area with traffic control devices in conformance with the Michigan Manual of Uniform Traffic Control Devices. Under the bill, those entities instead must post in each work zone speed limit signs that indicate the speed limit in that work zone, and identify the work zone with any other traffic control devices necessary to conform to the manual.

House Bill 5173

Previously, a person who committed a moving violation that had criminal penalties and as a result caused injury to a person working in a construction zone was guilty of a misdemeanor punishable by a maximum fine of \$1,000 or imprisonment for up to one year, or both. A person who committed a moving violation with criminal penalties and caused death to a person working in a construction zone was guilty of a felony punishable by a maximum fine of \$7,500 or up to 15 years' imprisonment, or both.

The bill retained those penalties but deleted reference to a moving violation "that has criminal penalties". The bill refers, instead, to a moving violation "for which not fewer than 3 points are assigned under section 320a". The bill also replaced the term "construction zone" with "work zone". (Under Section 320a, the Secretary of State, within 10 days of receiving a properly prepared abstract from Michigan or another state, must record the date of the conviction, civil infraction determination, or probate court disposition, and the number of points for each based on a schedule set forth in that section.)

The bill was tie-barred to House Bill 5089.

MCL 257.79d et al. (H.B. 5089)
257.601b (H.B. 5173)

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

Road construction work is a physically dangerous and emotionally draining job. In addition to the threat of being run over by motorists who are speeding, distracted, or reckless, highway workers face threats of physical violence from impatient and angry drivers and emotional stress when a coworker is injured or killed. According to supporters of Andy's Law, the accident described above was exactly the type of case that should trigger the Law's penalties; however, the driver was acquitted by exploiting a loophole. The definition of a "work zone" in House Bill 5089 will make it harder for dangerous drivers to claim that they did not know they were in a work zone, or that a crash site was not technically in a work zone. The revised definition, combined with the lower threshold for charging a driver under House Bill 5173, makes it less likely that a motorist prosecuted in the future will avoid punishment.

Opposing Argument

The threshold under House Bill 5173 is too low. If a driver can be charged under Andy's Law for a moving violation that carries only three points, an offense as minor as going five miles per hour over the posted speed limit could send someone to prison for 15 years. A four-point threshold, which would include going at least 10 miles per hour over the speed limit, would be more appropriate, as those violations are more egregious.

Response: A driver is subject to a 15-year sentence only if he or she commits a moving violation *and* kills a road worker. A four-point threshold would indicate to drivers that it was acceptable to engage in careless driving (a three-point civil infraction), which could endanger construction zone workers just as much as more serious four-point violations such as driving while impaired and drag racing. Furthermore, a police officer cannot determine the exact speed a car was traveling when a crash occurred, and can get only an estimate from an accident reconstruction. In

that case, the driver is issued a ticket for a violation of the basic speed law (VBSL), indicating that the driver was speeding but not by how much. A VBSL is a two-point violation, and therefore will not trigger Andy's Law penalties under House Bill 5173. The three-point threshold sends a clear message to motorists that they must exercise caution for the human beings working in highway construction zones.

Legislative Analyst: Julie Koval

FISCAL IMPACT

House Bill 5089

The bill would have no fiscal impact on State or local government.

House Bill 5173

The bill might increase State and local corrections costs by increasing the number of potential offenders. The increase may occur to the extent that "moving violation for which not fewer than 3 points are assigned" is more expansive than "moving violation that has criminal penalties".

Fiscal Analyst: Bethany Wicksall

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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.