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BILL ANALYSIS

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Senate Bill 353 (Substitute S-1 as reported)
Sponsor: Senator Dave Robertson
Committee: Judiciary

Date Completed: 2-7-12

RATIONALE

Operating a vehicle while under the influence (OUI) of alcohol or a controlled substance and operating a vehicle while impaired (OWI) due to the consumption of alcohol or a controlled substance are prohibited by the Michigan Vehicle Code and violators are subject to criminal penalties. Those proscriptions, however, do not cover a driver who is under the influence of or is impaired by a nonalcoholic intoxicating substance that is not a "controlled substance", which is a drug or substance included in Schedule 1 to 5 of Part 72 of the Public Health Code. Because such drivers can be just as affected by those substances as a drunk driver is affected by alcohol, it has been suggested that Michigan's laws prohibiting OUI and OWI should apply to a driver who is under the influence of, or is impaired by, *any* intoxicating substance.

the influence of an intoxicating substance or a combination of alcohol, a controlled substance, or another intoxicating substance.

"Intoxicating substance" would mean any substance, other than alcohol or a controlled substance, that is recognized as a drug in the official United States Pharmacopeia, official Homeopathic Pharmacopeia of the United States, or official National Formulary, or any supplement to any of them. The term also would include a substance, other than food, that when taken into a person's body may negatively affect his or her ability to operate a motor vehicle.

Operating While Under the Influence

The Vehicle Code prohibits a person from operating a vehicle upon a highway or other place open to the general public or generally accessible to motor vehicles if the person is operating while intoxicated. Operating while intoxicated includes a situation in which a person operates a vehicle while he or she is under the influence of alcohol, a controlled substance, or a combination of alcohol and a controlled substance. Under the bill, the OUI prohibition would include the operation of a vehicle by a person who was under the influence of alcohol, a controlled substance, or any other intoxicating substance or a combination of alcohol, a controlled substance, and another intoxicating substance.

Operating While Impaired

The Code prohibits a person from operating a vehicle upon a highway or other place

CONTENT

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

- **Prohibit a person from operating a vehicle while under the influence of any intoxicating substance.**
- **Prohibit a person from operating a vehicle while impaired due to the consumption of any intoxicating substance.**
- **Prohibit a person from allowing a vehicle to be operated by a person who was under the influence of, or visibly impaired by the consumption of, any intoxicating substance.**
- **Require a jury or court to make a finding as to whether a person charged with OUI or OWI was under**

open to the general public or generally accessible to motor vehicles while his or her ability to operate the vehicle is visibly impaired due to the consumption of alcohol, a controlled substance, or a combination of alcohol and a controlled substance. Under the bill, the OWI prohibition would include the operation of a vehicle by a person whose ability to operate a vehicle was visibly impaired due to the consumption of alcohol, a controlled substance, or another intoxicating substance, or a combination of alcohol, a controlled substance, or another intoxicating substance.

Allowing Use of Vehicle

Under the Code, the owner of a vehicle or a person in charge or in control of a vehicle may not authorize or knowingly permit the vehicle to be operated by another person upon a highway or other place open to the general public or generally accessible to motor vehicles if that other person is under the influence of alcohol and/or a controlled substance or the person's ability to operate a vehicle is visibly impaired due to the consumption of alcohol and/or a controlled substance. Under the bill, this prohibition would apply to a person who allowed a vehicle to be operated by someone who was under the influence of, or visibly impaired by the consumption of, alcohol, a controlled substance, or another intoxicating substance or a combination of alcohol, a controlled substance, or another intoxicating substance.

Jury or Court Finding

If a person is charged with OUI or OWI, the court must require the jury to return a written finding as to whether the person was under the influence of a controlled substance or a combination of alcohol and a controlled substance at the time of the violation. If the court convicts the person without a jury or accepts a plea of guilty or no contest, the court must make the finding. Under the bill, the jury or court would have to make a finding as to whether the person was under the influence of a controlled substance or another intoxicating substance or a combination of alcohol, a controlled substance, or another intoxicating substance at the time of the violation.

MCL 257.625

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

Driving a vehicle while intoxicated, or while impaired by an intoxicating substance, poses a significant risk not only to the driver and his or her passengers but also to anyone else on or near the road where the person drives. This is true regardless of whether the intoxicating substance used is alcohol, a controlled substance, or a substance not listed on the Public Health Code's schedule of controlled substances. Michigan's OUI and OWI provisions, however, apply only to a driver's use of alcohol or a controlled substance. Synthetic substances that are not listed on the controlled substance schedules and intoxicating substances such as aerosol sprays, glue, and lighter fluid can impair a person's reflexes and cognitive ability, both of which are crucial to operating a motor vehicle safely.

In testimony before the Senate Judiciary Committee, a Grand Blanc police officer said he had encountered several cases in which a driver's ability to operate a vehicle was impaired but the driver did not have a scheduled controlled substance or alcohol in his or her system. The officer told of responding to a recent car accident in which a driver was "huffing" an aerosol spray can. The driver had four spray can in his car and 20 empty cans in the trunk. The officer also said he had experience with other cases in which drivers who were too young to drink alcohol legally had high concentrations of strong cough syrup in their systems, which impaired their ability to drive. Another former law enforcement officer recalled having pulled over a driver who was sucking on a rag soaked with lighter fluid. All of these drivers were a threat to themselves and others because they were operating vehicles while under the influence of, or while impaired by, an intoxicating substance, but they could not be prosecuted for OUI or OWI because the substance was not on the State's list of controlled substances. By bridging the gap between impairment by controlled drugs and other intoxicating substances, the bill would help law enforcement to prosecute all impaired drivers and keep Michigan's streets safer.

FISCAL IMPACT

The bill would have an indeterminate fiscal impact on State and local government. To the extent that the inclusion of any other intoxicating substance led to an increase in OUI or OWI convictions, both the State and local units of government could incur additional costs. Local governments would incur the costs of incarceration in local facilities, which vary by county. The State would incur the cost of felony probation at an annual average cost of \$2,500, as well as the cost of incarceration in a State facility at an average annual cost of \$34,000. Additional penal fine revenue would benefit public libraries.

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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.