

OPERATING VEHICLE WITHOUT A LICENSE: INCREASE PENALTIES

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House Bill 5602 (reported from committee as H-1)
Sponsor: Rep. Peter J. Lucido
Committee: Criminal Justice
Complete to 11-17-16

Analysis available at
<http://www.legislature.mi.gov>

BRIEF SUMMARY: The bill requires a law enforcement officer to confiscate and destroy the license plate of an owner-operated vehicle and the Secretary of State to cancel the license plate for the following driving-related offenses:

- Operating a vehicle without a valid driver license.
- Inability to produce a driver license issued by any state or foreign country within the preceding three years upon request by a police officer.

FISCAL IMPACT: The bill would have fiscal implications for the Department of State Police and Secretary of State.

THE APPARENT PROBLEM:

It is a crime in Michigan to drive without a valid driver license, yet people do, often with tragic results. Accidents caused by unlicensed drivers killed a preschooler from Greenville, a teenager from Holland, and a 45-year-old Hillsdale man, to mention a few. The woman who struck the child had had her license suspended for medical reasons. The man who caused the teen's death had lost his license for failing to pay fees after receiving tickets for disobeying a traffic signal, failure to signal, and driving without insurance. At the time of the fatal accident, he had eight unresolved driver license suspensions.

The vehicle of the Hillsdale man was hit by a car driven by an unlicensed driver driving under the influence of a controlled substance (and who, after running a stop sign in Florida a few years later, was arrested for driving on a suspended/revoked license). In 2015, Michigan State Police Trooper Chad Wolf died of injuries after being hit by a vehicle pulling a trailer and dragged for several miles. The driver, currently awaiting trial, was recently arrested for driving on a suspended license, even though his bond conditions specifically prohibited him from operating a vehicle; reportedly, he was pulled over after being observed repeatedly failing to signal and running a stop sign.

The incidents cited above highlight the danger to public safety by those who continue to drive even after their licenses have been revoked or suspended and by those who never obtain a driver license. By some estimates, close to 13 percent of fatal accidents in Michigan involve a driver without a valid license, with many more incidents resulting in serious injuries.

Some believe more must be done to remove such dangerous drivers from the road. One proposal is to take away a vehicle's license plate if the owner of the vehicle drives it without a valid driver license. Since a valid license is required to obtain car insurance, and valid car insurance is required to obtain a new license plate, the vehicle could not be driven until such time as the owner obtains a valid driver license. Legislation has therefore been offered to require law enforcement officers to confiscate and destroy the license plate of an owner-driven vehicle if the owner does not have, or cannot produce, a valid driver license.

THE CONTENT OF THE BILL:

Registration plate confiscated/destroyed/cancelled:

House Bill 5602 amends the Michigan Vehicle Code to require a police officer who stops a person operating a vehicle *that he or she owns* without a valid driver license or who cannot produce evidence of a valid driver license upon request to do all of the following:

- Confiscate the vehicle's registration (license) plate and destroy it.
- Notify the secretary of state (SOS) through the Law Enforcement Information Network (LEIN) in a form prescribed by SOS that the plate was confiscated and destroyed.

If the SOS receives the notification described above that the owner of the vehicle was driving without a valid license or could not produce a valid license, the SOS must cancel the vehicle's license plate. The owner of the vehicle for which the registration plate was canceled by the SOS must obtain a new license plate for that vehicle when seeking to register it.

Operating a vehicle without a valid license/current law:

The Code prohibits a person whose operator's or chauffeur's license has been suspended or revoked, whose application for a license has been denied, or who has never applied for a license, from operating a motor vehicle (regardless of who owns the vehicle) upon a highway or other place open to the general public or generally accessible to motor vehicles, including parking lots. A violation is a misdemeanor; a first offense is punishable by imprisonment for not more than 93 days and/or a fine of not more than \$500 and a second or subsequent offense is punishable by a maximum term of imprisonment of one year and/or a maximum fine of \$1,000. These penalties would not be changed.

Inability to produce a valid license upon request:

Currently, unless a person is exempted from license requirements under the Code, it is a misdemeanor offense for a driver to operate a motor vehicle (regardless of who owns the vehicle) without being able to show that a currently valid license has been issued by any state or foreign county within the preceding three years. A first violation is punishable by imprisonment for not more than 90 days or by a fine of not more than \$100. A second or subsequent offense is punishable by not less than two days or more than 90 days imprisonment or a fine of \$100. This penalty remains the same.

The bill will impose the penalty described above if a person is unable to produce evidence of having been issued a license valid within the preceding three years upon the request of a police officer (underlining denotes new language).

[The Code defines "police officer" to mean any of the following:

- A sheriff or sheriff's deputy.
- A village or township marshal.
- An officer of the police department of any city, village, or township.
- An officer of the Michigan State Police.
- A peace officer who is trained and certified under the Commission on Law Enforcement Standards Act.
- In limited circumstances, a duly authorized agent of a county road commission.]

The bill takes effect 90 days after enactment.

MCL 257.904 and 257.904a

FISCAL INFORMATION:

MSP impact: This bill could impose negligible costs on the Michigan State Police and local law enforcement agencies, to the extent that it would increase reporting requirements by the Michigan Department of State.

SOS impact: The bill would result in an indeterminate but potentially considerable increase in revenue to the Michigan Transportation Fund and the Scrap Tire Regulation Fund, which fund transportation related services. The additional revenue would largely depend on the number of drivers who have their registration plates canceled in accordance with the new requirements of the bill, are compelled to renew their registration plates, and who would not have been compelled to do likewise under the current law.

ARGUMENTS:

For:

Despite its being a crime to drive without a license, many people do so. It is often dangerous for unlicensed persons to drive, as there are often compelling reasons why those persons no longer have, or are prohibited from obtaining, a driver license. Certain medical conditions make it unsafe for people to drive. Others have demonstrated that they are unsafe and careless drivers. They may even have outstanding warrants for previous bad acts. When people drive under the influence of alcohol, their vehicles are towed, impounded, and the license plates confiscated and destroyed. Yet these unlicensed drivers, though they will face criminal charges and possible jail time, along with additional driver license sanctions, still get to drive their vehicles away—even though they present a danger to the public every time they get behind a wheel, and even though they are likely to continue to drive without a license. Further, insurance companies may refuse to pay a claim when an unlicensed driver is involved.

The bill addresses the problem by requiring law enforcement officers to confiscate and destroy the license plate if the operator, who must also be the owner of the vehicle, does not possess a valid driver license or cannot present a valid license upon an officer's request. Since a valid license is necessary to obtain insurance on the vehicle, and proof of insurance is required to obtain a new license plate, the person will not be able to operate the vehicle on the state's roadways until such time as he or she obtains a valid driver license and is able

to register the vehicle with the Secretary of State. Thus, by taking away the vehicle's license plate, this measure should effectively weed out those who should not be driving.

For:

The committee-passed version of the bill only applies to situations in which the owner of a vehicle drives that vehicle without a valid license or cannot produce a valid license upon the request of a law enforcement officer. If the vehicle is borrowed, or owned by another member of the family, the vehicle's license plate will not be confiscated and destroyed. However, it is important to note that it is against the law for a vehicle's owner to knowingly allow someone who does not have a driver license to operate that vehicle. Doing so is a misdemeanor. If the person without a license causes an accident in which another person is seriously injured or dies, the vehicle owner will be guilty of a felony and could go to prison and/or have to pay substantial fines. Moreover, placing a counterfeit paper license plate on a vehicle constitutes felony fraud; a first offense can land someone in prison for two years, a third offense for fifteen. In addition, the vehicle would likely be subject to criminal seizure and forfeiture laws.

Thus, if enforced fully, current law should be sufficient to deter an unlicensed person from getting a friend or relative to "buy" and register a car for him or her, for people to loan their vehicles to someone they know does not have a valid license, or for unlicensed persons to place counterfeit paper licenses on their vehicles.

Against:

Michigan no longer allows undocumented aliens to obtain a driver license. Coupled with an underdeveloped urban and statewide public transportation system, the bill would disproportionately disadvantage many otherwise law-abiding residents of the state. Advocates for undocumented residents say that many of these individuals are part of mixed-status families. For instance, one spouse, a child, or a sibling may be a legal resident. As sometimes it is necessary to drive to get to work, or take a child to school or medical appointments, these residents may feel they have little choice but to drive without a license. Further, there are many reasons why someone may be considered to be here "illegally." Someone who forgot to renew a student or work visa, or who became stranded here on a tourist visa due to political upheaval in the home country, could suddenly and unintentionally find they are now an "illegal" resident. Thus, not all without a driver license are dangerous drivers, yet they would be captured under the bill. Until such time as broken state and federal laws regarding undocumented aliens are fairly fixed, the negative impact on immigrant and refugee communities should be carefully considered.

Against:

Another unintended consequence of the bill is that it may result in more vehicles being towed, impounded, and forfeited under local ordinances because they lack a current license registration. In order to prevent a proliferation of junk or abandoned cars, many local governments have ordinances that prohibit a vehicle without a current registration plate from being parked in a street or even in a private driveway. Fines can be assessed, the vehicle may be towed, and forfeiture may result if the fines are not paid in a timely manner. Depending on the reason a license was revoked or suspended, the period of a revocation or suspension may be lengthy (months to years for a suspension; revocations are one or five years and require review by the SOS for permission to be reinstated), and the process to

have the license reinstated may include administrative hearings and reexaminations, and possibly appeals to circuit court. To have the plate confiscated and destroyed immediately may not give a person sufficient time to obtain a valid license, or even to sell the vehicle, before a local jurisdiction tows it as an abandoned vehicle for not having a current license plate. This could prove a particular hardship for low-income individuals and families.

POSITIONS:

A representative of Michigan United testified in opposition. (9-13-16)

A representative of Migrant Legal Aid testified in opposition. (9-13-16)

A representative of the Detroit Hispanic Development and One Michigan Immigrant Rights testified in opposition. (9-13-16)

A representative of the Christian Reformed Church in North America testified in opposition to the bill. (5-24-16)

Representatives of One Michigan for Immigrant Rights testified in opposition to the bill. (5-24-16)

The Michigan Coalition for Immigrant and Refugee Rights submitted written testimony raising concerns over negative impacts on refugee and immigrant communities and their families. (5-23-16)

Michigan Immigrant Rights Center indicated opposition to the bill. (9-13-16)

The ACLU of Michigan indicated opposition to the bill. (9-13-16)

The Michigan Poverty Law Program indicated opposition to the bill. (5-24-16)

Action of Greater Lansing indicated opposition to the bill. (5-24-16)

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