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MINORS POSSESSING ALCOHOL

House Bill 4722 (Substitute H-1) First Analysis (5-16-95)

Sponsor: Rep. David Jaye
Committee: Regulatory Affairs

THE APPARENT PROBLEM:

The state constitution specifies that if a bill is neither signed nor vetoed within 14 days after it has reached the governor's desk, and the legislature has adjourned before the end of the 14 days, then the bill does not become law. This circumstance occurred with House Bill 4323 of 1994, which was tie-barred to Senate Bill 482 (meaning Senate Bill 482 could only take effect if House Bill 4323 was also enacted). Senate Bill 482, which was approved as Public Act 447 of 1994, would provide for increased penalties, including driver license suspension, for repeat offenders of underage drinking. It also would repeal a section of the Michigan Liquor Control Act (MCL 436.33b, amended by Public Act 447 of 1994) which pertains to the possession and transportation of alcohol in a motor vehicle by a person under 21 years of age. (For more information on Public Act 447 of 1994, see the House Legislative Analysis Section's analysis of House Bill 4323 and Senate Bill 482, dated 1-20-95.)

The repealed language from the Michigan Liquor Control Act was inserted into the Michigan Vehicle Code by House Bill 4323, along with several new provisions, but was vetoed by the governor. Though Public Act 447 had an effective date of April 1, 1995, it cannot take effect unless the tie-bar to House Bill 4323 is repealed. Senate Bill 274, which would repeal the tie-bar, is currently before the House. However, if Senate Bill 274 is enacted into law, repealing the tie-bar, and allowing Public Act 447 to go into effect, there will no longer be provisions under either the Michigan Liquor Control Act or the Michigan Vehicle Code prohibiting the transportation or possession of alcohol in a motor vehicle by a person under 21 years of age. Legislation has been proposed to remedy this complication.

THE CONTENT OF THE BILL:

House Bill 4722 would amend the Michigan Vehicle Code to alter penalties for conduct relating to the possession or transportation of alcohol in a closed container in a motor vehicle by a person under 21 years of age. The bill would provide for the provisions in the Michigan Liquor Control Act that would be repealed if Public Act 447 of 1994 should go into effect to be moved to the Michigan Vehicle Code. Those provisions are as follows:

**** A person under 21 years of age knowingly possessing or transporting alcohol in a motor vehicle would be guilty of a misdemeanor. Exceptions would be provided for those in certain types of employment or those accompanied by a person at least 21 years of age.**

[By moving this provision from the Michigan Liquor Control Act to the Michigan Vehicle Code, a person would be cited under a moving violation charge. A conviction would allow two points to be entered against the person's driver's license. (MCL 257.320a)]

**** The owner of a vehicle used by a minor in the transporting of alcohol could, at the discretion of the court, have his or her vehicle impounded for 15 to 30 days if the court found that the person had knowledge of, or gave express or implied consent to, the use of the vehicle for transporting alcohol. Upon a complaint by the arresting officer, the court would issue an order to the vehicle owner, requiring him or her to show cause as to why the vehicle should not be impounded. A vehicle would not be impounded until after a hearing was held, and could not be impounded if the owner was able to show that the vehicle was needed in the direct pursuit of his or her employment or the actual operation of his or her business. During an impoundment, the**

House Bill 4722 (5-16-95)

vehicle would be held at a public or private garage at the expense and risk of the owner. Impoundment of a vehicle could be appealed under provisions governing the taking of appeals from judgements for damages. A lienholder's rights would not be affected under these provisions. A person who knowingly transferred title to a vehicle in order to avoid impoundment would be guilty of a misdemeanor.

In addition, the bill would add several new provisions.

****** Within 48 hours of determining that an alleged violator was less than 18 years of age, a law enforcement agency would have to notify the minor's parent or legal guardian.

****** A person cited for or determined to be responsible for an underage drinking violation under section 33b of the Michigan Liquor Control Act (MCL 436.33b, amended by Public Act 447 of 1994) would have his or her driver's license suspended if he or she first failed to answer a citation or a notice to appear in court or failed to comply with an order or judgment of the court and then failed to respond to a subsequent notice from the court giving the person seven days to appear or fourteen days to comply. [Currently, licenses are suspended in like manner for similar non-compliance for violations of the Michigan Vehicle Code which pertain to driving under the influence of alcohol and rules pertaining to civil infractions (MCL 257.625 and 257.907).]

******Currently, the secretary of state compiles an annual report of disposition of charges for violations of the Michigan Vehicle Code pertaining to driving under the influence of alcohol. The bill would require the secretary of state to include the disposition of charges for violations of section 33b of the Michigan Liquor Control Act in the report.

****** The bill would also make a technical amendment to Section 320e, deleting a provision that was erroneously placed in the act in late 1994. The language refers to a section that was not enacted.

MCL 257.320 et. al.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill would have minimal fiscal impact on the Department of State. The fiscal impact on the state's courts is indeterminate at this time. (5-15-95)

ARGUMENTS:

For:

If Senate Bill 274, which calls for the repeal of the tie-bar between Public Act 447 and House Bill 4323 of 1993-94, is enacted, there will be no legal prohibition on the transportation and/or possession of alcohol in a motor vehicle by a person under 21. House Bill 4722 would remedy the situation by placing the prohibition into the Michigan Vehicle Code. Though similar in content to House Bill 4323 of 1993-94, House Bill 4722 would retain the language necessary to implement the package from last year, but does not contain a provision of the earlier bill regarding earmarking of certain fees that the governor objected to.

For:

The bill would allow for greater accountability and family involvement by requiring law enforcement officers to notify the parent or guardian of a minor within 48 hours that the person was in violation of possessing or transporting alcohol. For instance, a person could not just pay the fine and not mention the citation to his or her parent. Hopefully, this would encourage problem-solving at the family level, and lead to decreased violations on the part of minors.

Against:

The bill does not specify which court--district or probate--would have jurisdiction over violators younger than 17 years of age.

Against:

Under the committee substitute, a person under 21 years of age transporting or possessing alcohol in a closed container in a motor vehicle would be guilty of a misdemeanor, but would have no driver license sanctions other than receiving two points against his or her license. However, Public Act 447 of 1994

would require the suspension or restriction of a driver's license for repeat offenders of underage drinking, including purchasing, possessing, consuming, and transporting alcohol, even though a violation would be a civil infraction. Therefore, the misdemeanor would carry weaker sanctions than the civil infraction. As introduced, the bill would have provided for driver's license suspensions, as does Public Act 447.

Response:

The inclusion of driver's license suspensions in this bill may have appeared to add conformity between the Michigan Liquor Control Act and the Michigan Vehicle Code in regard to penalties for underage liquor violations. However, the section of the Michigan Vehicle Code pertaining to the transportation of alcohol in open containers, though a misdemeanor charge, does not carry license sanctions other than having two points assessed against the license (MCL 257.624a). The penalty is the same for violators of any age. Had the language calling for license suspensions been retained in House Bill 4722, there would have been stiffer penalties for an underage person transporting or possessing a closed container of alcohol than for an open container of alcohol. For that reason, the language was removed.

Against:

House Bill 4722 would create a situation whereby a person under 21 years of age in possession of alcohol could lose his or her driver's license under the Michigan Liquor Control Act for a non-driving offense (under Public Act 447 of 1994), yet not lose his or her license for a driving offense under the Michigan Vehicle Code. For instance, a teenager walking with a six-pack of beer could lose his or her driver's license for a second offense, while a teenager driving with a six-pack of beer would only get two points assessed against his or her license. This could send a confusing message to young people about possessing or transporting alcohol -- walk, you lose your license; drive, you don't. If the purpose of the legislation is to toughen laws against underage persons possessing, transporting, and/or consuming alcohol in motor vehicles, than perhaps there should be complementary license sanctions against possessing or transporting alcohol--whether in open or closed containers--similar to the sanctions under Public Act 447 of 1994 amending the Michigan Liquor Control Act.

POSITIONS:

The Michigan Grocers Association supports the bill. (5-10-95)

The Department of State Police supports the concept of the bill. (5-10-95)

The Department of State supports the concept of the bill, but encourages the removal of alcohol from vehicles in which minors are present or driving. (5-10-95)

The Michigan Judges Association has no position on the bill at this time. (5-11-95)