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BILL ANALYSIS

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Senate Bill 376 (Substitute S-1 as reported)
Sponsor: Senator Loren Bennett
Committee: Transportation and Tourism

Date Completed: 5-23-95

RATIONALE

In 1974, as a fuel conservation measure in the wake of the 1973-74 Arab oil embargo, the speed limit for motor vehicles was lowered. The Federal Emergency Highway Energy Conservation Act of 1974 required all states to legislate maximum highway speeds of 55 miles per hour (mph) to replace the then existing 70 mph limit. Michigan complied by enacting Public Act 28 of 1974, which established so-called "energy speed" points to be entered on the driving record of people who exceeded 55 mph. Subsequently, as fuel conservation became a less crucial issue, Congress enacted legislation allowing the states to raise speed limits to 65 mph on stretches of interstate highways outside urbanized areas. Michigan then enacted Public Act 154 of 1987 to set up a new system of points and maximum fines for speeding violations on limited access highways where the speed limit was 55 mph or greater (described in **BACKGROUND**). Public Act 154, however, did not repeal the energy speed point system established in 1974. As a result, the Michigan Vehicle Code contains a dual point system for speeding violations over 55 mph. Apparently, this can be quite confusing to law enforcement officers, and it is reported that the energy speed points are rarely applied. Therefore, some have suggested that this point system be repealed.

Another concern involves penalties for repeated drunk driving offenses. The Revised Judicature Act (RJA) provides for the seizure and forfeiture of personal and real property used for or obtained through the commission of any of some 60 crimes. Although drunk driving is not a profitable crime, as are many of the offenses included in the RJA's forfeiture provisions, it is a crime whose commission involves the dangerous use of a valuable item of property. To remove the tool used in perpetrating this crime and to provide a deterrent against drinking and driving, some people believe that habitual drunk driving offenders should be subject to the seizure and forfeiture of their vehicles.

CONTENT

The bill would amend the Michigan Vehicle Code to delete provisions that require points to be entered on a person's driving record for exceeding the lawful maximum speed that was reduced by Public Act 28 of 1974. The bill also would provide for the seizure and forfeiture of a vehicle owned, or the return of a vehicle leased, by a person who was convicted of operating a vehicle under the influence of liquor or a controlled substance (OUIL) within 10 years of two or more prior convictions.

Energy Points

Under the Code, if a person is determined to be responsible for a civil infraction for a violation of a law or ordinance pertaining to speed "by exceeding the lawful maximum on a street or highway as that maximum was reduced by" Public Act 28 of 1974, points must be entered as follows:

-- Sixty mph to the lawful maximum in effect before Public Act 28: 1 point.
-- Ten mph or less over the lawful maximum before Public Act 28: 2 points.
-- More than 10 but not more than 15 mph over the lawful maximum before Public Act 28: 3 points.
-- More than 15 mph over the lawful maximum before Public Act 28: 4 points.

Vehicle Seizure and Forfeiture

Except as otherwise provided in the bill and in addition to any other penalty provided for in the Code, a judgment of sentence for an OUIL conviction within 10 years of two or more prior convictions would require forfeiture of the vehicle used in the offense if the defendant owned the vehicle in whole or in part. If the defendant leased the vehicle, the sentence would have to require return of the vehicle to the lessor. The vehicle could be seized without process incident to a lawful arrest for this offense or pursuant to an order of seizure issued by the court upon a showing of probable cause that the vehicle was subject to forfeiture or return to the lessor. Within three days of the defendant's conviction, the prosecutor would have to give notice to all owners of the vehicle and any person holding a security interest in it of the intent to forfeit or require return of the vehicle. (Under the Code, for an OUIL offense, "prior conviction" means an OUIL violation, or an OUIL or operating-while-impaired violation that caused the death or serious impairment of a body function of another person.)

An owner or lessee of the vehicle could bring a motion to require the seizing agency to file a lien against the vehicle and to return it to the owner or lessee pending disposition of the criminal proceedings. The court would have to hear the motion within seven days after it was filed. If the owner established at the hearing that he or she held the legal title of the vehicle, or if the lessee established that he or she had a leasehold interest, and that it was necessary for him or her or his or her family to use the vehicle pending the outcome of the forfeiture action, the court could order the seizing agency to return the vehicle to the owner or lessee. If the court ordered the return of the vehicle, it would have to order the seizing agency to file a lien against the vehicle.

The forfeiture would be subject the interest of the holder of a security interest who did not have prior knowledge of or consent to the commission of the violation. Within 14 days after the prosecutor gave notice of intent to forfeit or require return of the vehicle, an owner, lessee, or holder of a security interest could file a claim of interest in the vehicle. Within 21 days after the period for filing claims expired, but before sentencing, the court would have to hold a hearing to determine the legitimacy of any claim, the extent of any co-owner's equity interest, and the liability of the defendant to any co-lessee.

The unit of government that seized the forfeited vehicle would have to sell it and dispose of the proceeds in the following order of priority:

-- To pay any outstanding security interest of a secured party who did not have prior knowledge of or consent to the commission of the violation.
-- To pay the equity interest of a co-owner who did not have prior knowledge of or consent to the commission of the violation.
-- To satisfy any order of restitution in the prosecution for the violation.
-- To pay the claim of each person who showed that he or she was a victim of the violation to the extent that the claim was not covered by an order of restitution.
-- To pay any outstanding lien against the property that had been imposed by a governmental unit.
-- To pay the proper expenses of the proceedings for forfeiture and sale, including expenses incurred during the seizure process and expenses for maintaining custody of the property, advertising, and court costs.

After the payment of items described above, the balance would have to be distributed by the court to the unit or units of government substantially involved in effecting the forfeiture. A unit of government would have to use 75% of the money received to enhance the enforcement of the criminal laws, and 25% to implement the Crime Victim's Rights Act, and would have to report annually to the Department of Management and Budget the amount of money received for each purpose.

The court also could order the defendant to pay to a co-lessee any liability determined under the bill's provision governing the distribution of proceeds. This order could be enforced in the same manner as a civil judgment.

A person who knowingly concealed, stole, gave away, or otherwise transferred or disposed of a vehicle with the intent to avoid forfeiture would be guilty of a felony punishable by imprisonment for up to four years and/or a maximum fine of $2,000.

MCL 257.208 et al.

BACKGROUND

Under Section 629c of the Michigan Vehicle Code, which was added by Public Act 154 of 1987, a person who is responsible for violating the maximum speed limit on a limited access freeway upon which the maximum speed limit is 55 mph or more, "shall be ordered by the court to pay a minimum fine and shall have points entered on his or her driving record by the secretary of state only according to the following schedule...":

Speed in mph	Points	Minimum Fine
56 to 60	0	$10
61 to 70	1	$20
71 to 80	2	$30
81 to 85	3	$40
86 or over	4	$50

In addition, Section 320a of the Code also prescribes points that must be assessed for various violations, including speeding. Section 320a (which also contains the energy speed points) applies "...except as otherwise provided in this section and section 629c". Under Section 320a, four points must be assessed for speeding by more than 15 mph, three points must be assessed for speeding by more than 10 but not more than 15 mph, and two points must be assessed for speeding by 10 mph or less.

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

The energy speed point system was established 1974 when fuel conservation was considered crucial and states were subject to a Federal mandate that made highway funding contingent upon reduced speed limits. Although Public Act 154 of 1987 was enacted to reflect changes in the Federal law as well as revised perceptions of the need to conserve fuel, the energy speed points are still in the Vehicle Code. Moreover, in addition to remaining on the books, the energy speed point system remains in effect, according to a 1988 Opinion of the Attorney General (No. 6551). The Code's dual point system for speeding violations over 55 mph can be very confusing to law enforcement officers--or at least to those who realize that more than one point system exists--and reportedly the energy speed points are rarely used. By deleting the energy speed point system, the bill would eliminate confusion on the part of law enforcement officers, as well as the possibility that two motorists could receive different points for the same speeding violation, depending on the law enforcement officer involved.

Supporting Argument

Although various laws have been passed in recent years to stiffen criminal and civil penalties for drunk drivers, habitual drunk driving continues to be a problem in Michigan. In 1993, there were 1,692 convictions for a third OUIL offense in 10 years; in 1994, the number of convictions grew to 1,810. Another approach to punishing drunk drivers and attempting to deter repeat offenders is to take from a drunk driver the tool with which the crime is committed. The bill would accomplish this by requiring the seizure and forfeiture of a vehicle owned, or the return to the lessor of a vehicle leased, by a person convicted of a third OUIL offense in 10 years. Moreover, the forfeiture of a habitual drunk driver's vehicle could provide additional funds for victims' services and law enforcement purposes.

Response: The bill could have little effect on drunk drivers, since it reportedly is rare for third-time OUIL offenders to have a car titled in their own name. Often, they drive vehicles titled in the name of a spouse, parent, sibling, or friend. Even if an offender's own vehicle were seized and forfeited, or returned to the lessor, it would not necessarily keep the offender from driving a vehicle belonging to someone else.

Opposing Argument

The bill could be overly punitive by subjecting the lessee of a seized car to a lawsuit by the lessor. If a leased vehicle is returned to the lessor, the lessee generally remains liable for difference between the original value of the vehicle and its value at the time of return. The same holds true in the case of a vehicle being financed: The purchaser would be liable for the difference between the amount financed and the worth of the car when it was seized and forfeited. While it would not be unreasonable to deprive a habitual drunk driver of his or her vehicle, it would be unduly harsh to subject someone to an automatic lawsuit and a financial liability that could amount to thousands of dollars

Response: Presumably, it would be extremely unlikely that a habitual drunk driver could lease a vehicle. Furthermore, it would not be inappropriate to subject someone convicted of a third OUIL offense to this additional penalty, especially since it is common for actual drunk driving incidents to outnumber drunk driving convictions.

Opposing Argument

Although the Revised Judicature Act already provides for the seizure and forfeiture of property used in many crimes, it would not be fair to deprive a person of his or her total equity in a seized vehicle. There is a considerable monetary difference between taking away someone's gun and taking away his or her automobile.

Response: The RJA provides for the seizure and forfeiture of both personal and real property, which can be far more valuable than an automobile. Furthermore, like the bill, the RJA requires the balance of the proceeds, if any, to be distributed to local units of government, not to the offender, after payments to other parties.

Legislative Analyst: S. Margules

FISCAL IMPACT

Revenue generated under the forfeiture provisions of the bill would depend on the number of vehicles, the unencumbered value, and the costs of the forfeiture proceedings. There were 1,692 third-offense convictions in 1993 and 1,810 in 1994.

Fiscal Analyst: B. Bowerman

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