

Legislative Analysis



REVISE PENALTY FOR INSURED DRIVERS LACKING TIMELY PROOF OF INSURANCE

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House Bill 4308 as enrolled
Public Act 52 of 2004
Sponsor: Rep. John Garfield
House Committee: Judiciary
Senate Committee: Appropriations

Third Analysis (10-6-05)

BRIEF SUMMARY: The bill would amend the Michigan Vehicle Code to:

- eliminate penalties for failure to produce proof of insurance if the driver was insured;
- allow – instead of require – an assessment fee of \$25 in such cases;
- eliminate the driver responsibility fee for a driver who could not produce proof of insurance (as long as insurance was actually in force at the time);
- increase the driver responsibility fee for a driver who did not have insurance in effect at the time of a violation; and,
- increase the civil fine for driving without proof of insurance.

FISCAL IMPACT: The fiscal impact on state or local units of government is indeterminate.

THE APPARENT PROBLEM:

A person who operates a motor vehicle that is not properly insured as required by state law is guilty of a misdemeanor offense under the Insurance Code and subject to a civil infraction under the Michigan Vehicle Code. Prior to 1996, people who drove without carrying proper proof of insurance in their vehicles were punished under the Michigan Vehicle Code differently from those who drove without any insurance at all. Since Public Act 287 of 1995 took effect in January of 1996, the law has not distinguished at all between these two groups. Like those who drive without insurance, the insured person who forgot to place the proof of insurance in the glove box must pay a \$25 assessment fee on top of a civil fine and court costs. In addition, as of October 1, 2003, the insured driver had also to pay a driver responsibility fee for failure to produce proof of insurance of \$150 per year for two consecutive years.

Some people have also reported problems with insurance companies raising their insurance premiums after having received a citation for failure to produce proof of insurance. Apparently, this is due to the fact that an abstract of the court record is sent to the secretary of state and included in the person's driving record; reportedly, this abstract does not distinguish driving without proof of insurance but having insurance from driving without insurance, leading some insurers to believe that drivers have driven without valid insurance in force (hence, providing grounds for rates to be increased).

Moreover, some law enforcement officers apparently believe that drivers can still have the penalties waived if a valid proof of insurance is presented to the court and therefore do not always give drivers sufficient time to locate the proof of insurance certificate. That waiver was eliminated by the 1995 legislation.

Since 1996, many complaints have been received by law enforcement officers, courts, the Secretary of State, and legislators from people who did have valid insurance in force at the time they received a citation for not producing their proof of insurance. Citizens told by police officers that the fines will be waived when the proof of insurance is shown to the court or that the violation will not appear on their driving records are angered when they discover otherwise. Furthermore, court personnel report that since at least half (if not more) of the people seen in court for these violations were properly insured, the law creates much unnecessary work for staffs already affected by reductions in resources and personnel.

Legislation was therefore introduced to once again distinguish between a person who has insurance but, for one reason or another, fails to place the proof of insurance in the vehicle from a person who chooses to not insure his or her vehicle.

THE CONTENT OF THE BILL:

Prior to enactment of House Bill 4308, an owner or operator of a motor vehicle who failed to produce evidence of insurance or who failed to have motor vehicle insurance as required by the Insurance Code was responsible for a civil infraction of up to \$10, a \$25 court assessment fee, court costs of up to \$100, and a driver responsibility fee of \$150 per year for two consecutive years.

Under House Bill 4308, if, before the appearance date on the citation, the person submitted proof to the court that the vehicle was properly insured at the time of the violation, the court could not assess a fine or costs and could not forward an abstract of the court record to the secretary of state (SOS). In addition, the person would no longer have to pay the driver responsibility fee added by Public Act 165 of 2003. The court would have the option, however, of assessing a fee of \$25, payable to the court funding unit.

If a person was issued a citation for driving without proof of insurance between October 1, 2003 and May 1, 2004 (the bill's effective date), the court would have to rescind the abstract and notify the SOS, who would have to refund, waive, or both refund and waive the driver responsibility fee corresponding to the violation if the person produced a certificate of insurance that was in effect at the time the citation had been issued. However, the proof of insurance under this provision needed to have been presented to the court by June 30, 2004 (not more than 60 days after the bill's effective date).

A person who was driving without the required proof of insurance would still be responsible for a civil infraction, any costs imposed by a court, and, upon the court's discretion, the \$25 assessment fee. Currently, the civil fine for not providing proof of

insurance is capped at \$10. This would be increased to not more than \$50. The bill would require that an abstract of the court record be forwarded to the SOS. Further, upon posting of the abstract that the person had been found guilty or determined responsible for driving without proof of insurance, the SOS would have to assess a \$200 driver responsibility fee each year for two consecutive years. (Additional penalties may be imposed for violating the requirement under the Insurance Code that a certain level of insurance be maintained.)

The bill would also specify that a driver responsibility fee would have to be assessed in the same manner for a conviction or determination of responsibility for a violation or an attempted violation of a law in this state or local ordinance substantially corresponding to the state law, or of a law of another state that substantially corresponded to a law of this state. (For example, if a driver was cited in another state for not carrying proof of insurance, and that state's law substantially corresponded to Michigan's law, a driver would still be assessed the driver responsibility fee.)

Miscellaneous provisions. The bill would make minor corrections to several provisions, specify that money in the Transportation Administration Collection Fund would not lapse into the Michigan Transportation Fund at the close of a fiscal year, and add to the list of offenses for which a court clerk must forward an abstract upon conviction to the SOS a violation of Section 3101, 3102(1), or 3103 of the Michigan Insurance Code (all pertain to maintaining insurance to cover liability from losses associated with a vehicle).

The bill would take effect 30 days after enactment.

MCL 257.307 et al.

ARGUMENTS:

For:

Currently, a person who has valid motor vehicle insurance but who forgets to place the proof of insurance in the glove box is penalized the same as the person who chooses not to insure his or her vehicle or who, for one reason or another, allows the insurance to lapse. Abstracts of court records sent to the secretary of state do not distinguish between those who had insurance but couldn't produce proof of it and those who have no insurance at all. Because of this, some citizens have reported that insurers have raised their insurance rates or denied renewal because it looked to the insurer that the person had been driving with no insurance. Further, the driver responsibility fee created by Public Act 165 of 2003 imposes a fee of \$150 for two years regardless of whether valid insurance was in effect or not.

The bill would correct this inequity by properly penalizing those who fail to maintain required levels of insurance and those who do have their vehicles insured but who, for various reasons, cannot produce proof of that insurance to a law enforcement officer (some people report that officers don't give sufficient time to dig through the glove box to find the certificate). Under the bill, a person having insurance would not have to pay

the driver responsibility fee, the civil fee, or court costs. However, he or she may still have to pay a \$25 court assessment fee if a court chose to impose that fee, but that is a more appropriate reminder to always place the proof of insurance in the vehicle. In addition, the court could not send an abstract to the SOS; therefore, no record of the failure to produce proof of insurance would be included on a person's driving record.

It should be noted, though, that a person would have to submit verification that insurance was indeed in effect at the time of the violation before the appearance date listed on the ticket in order to avail himself or herself of the waiver of the fees, fines, and costs. As written, failure to do so, even if the person did have valid insurance, would subject the person to the same penalties as driving without any insurance at all.

For:

Most drivers cited for failure to produce proof of insurance do have valid insurance, but for some reason, were not able to produce it quickly enough to a law enforcement officer in order to avoid a citation. This results in a lot of what seems to be unnecessary work for court and SOS staff in reporting and processing information on drivers who did in fact have insurance. The bill's requirement that no abstract be sent to the SOS, and the elimination of the driver responsibility fee for those who did have valid insurance, will eliminate this kind of unnecessary work and allow for better utilization of court and SOS personnel during this time when many staffs are working short-handed. Further, the bill's requirement that courts waive the fines, costs, and other fees (except for the \$25 assessment fee) upon receipt of verification of insurance is similar to the waiver in the vehicle code for failure to produce a valid registration certification.

For:

The bill would properly focus penalties on those who drive without insurance. Reportedly, some choose to pay the occasional fine because it is cheaper than maintaining insurance. Under the bill, the civil fine for not providing proof of insurance would be increased to not more than \$50, an abstract of the court record would be sent to the SOS and included on a person's driving record, and the driver responsibility fee would be increased from \$150 to \$200 for each of two consecutive years. This should act as an effective deterrent to driving without insurance and reduce the numbers of uninsured motorists on the roads.

Against:

One major reason people allow their insurance to lapse is because of the high cost of motor vehicle insurance. Auto insurance in some parts of the state, notably urban core areas, is extraordinarily high. Yet, the bill would increase both the civil fine and the driver responsibility fee for an uninsured driver who cannot produce proof of insurance. This would pose a hardship for low-income individuals who may be dependent on their vehicle to get to and from work. Moreover, this driver responsibility fee is in addition to the \$500 per year fee for two years for not having insurance! Where the fine increases may be appropriate as a deterrent to those individuals who can afford insurance but choose not to insure their vehicles, the increased fines are too harsh for low-income individuals who have few resources.

Rather than financially punish those who can least afford it, more measures need to be explored to provide for affordable car insurance, especially for low-income persons who may have no other transportation options to get to and from work, doctors' appointments, and so forth. Some people would argue that before increasing the penalties on already overburdened drivers, the legislature should take a more comprehensive look at the way insurance premiums are determined.

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