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House Bill 5120 (Substitute H-2 as passed by the House)
Sponsor: Representative William Van Regenmorter
House Committee: Criminal Justice
Senate Committee: Judiciary

Date Completed: 1-20-04

CONTENT

The bill would amend the Michigan Vehicle Code to include violations of Section 625(8) of the Code in several provisions relating to license sanctions and court proceedings in drunk driving cases. Section 625(8), which was enacted by Public Act 61 of 2003 (House Bill 4247) and took effect on October 1, 2003, prohibits a person from operating a vehicle if he or she has any bodily presence of a Schedule 1 controlled substance or cocaine (a bodily presence violation).

The bill also would revise the definition of "alcoholic liquor" and include the Dominion of Canada within the Code's definition of "state".

Each of the provisions concerning license sanctions and court procedures currently applies to all or most of the following offenses:

- Operating a vehicle while intoxicated.
- Operating a vehicle while impaired by alcohol or a controlled substance.
- Causing a death or serious impairment of a bodily function due to driving while intoxicated or impaired.
- Driving while intoxicated or impaired with a passenger under 16 years old (child endangerment).
- Operation of a vehicle by a person under 21 years old who has "any bodily alcohol content" (a zero-tolerance violation).
- Operation a commercial motor vehicle by a person whose a blood alcohol content is .04 gram or more.

License Sanctions

The bill would include a bodily presence offense in provisions that do the following:

- Require a one-year suspension of all vehicle group designations on a person's driver's license if he or she is convicted of or found responsible for an offense described above while operating a commercial motor vehicle.
- Require a 10-year revocation of all vehicle group designations if the offender is convicted of or found responsible for any combination of two violations described above, while operating a commercial motor vehicle, arising from two or more separate incidents.

In addition, the Secretary of State must suspend a person's driver's license if he or she is charged with, or convicted of, a drunk driving offense under the Code (or a substantially corresponding local ordinance) and fails within certain time periods to answer a citation or a notice to appear in court or fails to comply with a court order or judgment. Under the bill, this

requirement also would apply to a local ordinance substantially corresponding to a bodily content violation.

Court Procedures

Under the Code, a person arrested for a drunk driving offense must be arraigned with 14 days after arrest; have a pretrial conference within 35 days (or, if the district court has only one judge who sits in more than one location, within 42 days); and be finally adjudicated with 77 days. The bill would include a person arrested for a bodily presence violation or a substantially corresponding local ordinance in the time requirements for those proceedings.

Those time requirements do not apply to particular drunk driving offenses punishable as a felony or joined with a felony charge. The bill also would make an exception for a bodily presence violation and child endangerment that was punishable as a felony and a bodily presence violation joined with a felony charge.

The bill would include a bodily presence violation in provisions that do the following:

- Require the court, before accepting a plea of guilty or no contest ("nolo contendere") for any drunk driving violation under the Code or a substantially corresponding local ordinance, to advise the accused of the maximum possible term of imprisonment and the maximum possible fine that may be imposed, and that the maximum possible license sanctions that may be imposed will be based upon the master driving record maintained by the Secretary of State.
- Require the court, before imposing a sentence for certain drunk driving offenses, to order the person to undergo screening and assessment to determine whether he or she is likely to benefit from rehabilitative services, including alcohol or drug education and alcohol or drug treatment programs.
- Require the court immediately to forward to the Secretary of State an abstract of the court record for each case charging a drunk driving offense in which the charge is dismissed or the defendant is acquitted.

In addition, if a person is arrested without a warrant for a drunk driving violation, he or she must be arraigned, without unreasonable delay, by the magistrate who is nearest or most accessible within the judicial district; or, if the person is a minor, he or she must be taken before the family division of circuit court. The bill would add a bodily presence violation and a substantially corresponding local ordinance to that provision.

Definitions

Currently, under the Vehicle Code, "alcoholic liquor" means that term as defined in the Michigan Liquor Control Code. (Under the Liquor Control Code, "alcoholic liquor" means "any spirituous, vinous, malt, or fermented liquor, liquids and compounds, whether or not medicated, proprietary, patented, and by whatever name called, containing ½ of 1% or more of alcohol by volume, which are fit for use for beverage purposes".) Under the bill, "alcoholic liquor" would be defined instead as "any liquid or compound, whether or not medicated, proprietary, patented, and by whatever name called, containing any amount of alcohol including any liquid or compound described" in the Liquor Control Code's definition.

Under the Vehicle Code, "state" means any U.S. state, territory, or possession, Indian country as defined in Federal law (18 USC 1151), the District of Columbia, or any province of the Dominion of Canada. The bill would add the Dominion of Canada to that definition.

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

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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.