

DRUG VIOLATORS: NO DRIVING

Senate Bill 222 (Substitute H-6)
Sponsor: Sen. R. Robert Geake

Senate Bill 267 (Substitute H-2)
Sponsor: Sen. Jon Cisky

Senate Committee: Judiciary
House Committee: Judiciary

First Analysis (10-21-93)

THE APPARENT PROBLEM:

Substance abuse among Americans has increased dramatically over the last two decades, especially the illicit use of powerfully addicting drugs such as cocaine and so-called "crack." Heavy trafficking and use of drugs directly influences the crime rate, endangers the lives of citizens, erodes community morale, and costs governments and private industry billions of dollars for law enforcement, drug prevention, and drug rehabilitation programs. Efforts to reduce the drug problem focus on educating the public on the dangers of even minimal illicit drug use ("just say no"), reducing the flow of illegal substances into and throughout the country, and exacting stiffer penalties on drug traffickers and users. In order to attack the widespread distribution and use of drugs in this country, the federal government adopted regulations last year that require states to adopt laws that could deter criminal drug use by threatening those who violate drug laws with the loss of their driver's licenses. Failure to enact such laws could result in the loss of matching federal transportation funds. States are required to comply either by enacting such a law or adopting a resolution stating their opposition to the federal requirement to adopt the law. Legislation has been introduced that would adopt the provisions of federal law as it applies to driver's license suspension or revocation for certain drug violations.

THE CONTENT OF THE BILLS:

The bills would amend the Michigan Vehicle Code and the Code of Criminal Procedure to require the denial or suspension of a person's driver's license for certain drug-related offenses. Generally, a suspension would have to be for six months or, if an offender had a prior conviction within seven years, for one year. The bills also would provide for the imposition of community service and rehabilitation,

the issuance of restricted licenses, and the maintenance of a central file of drug and steroid offenders. Senate Bill 267 is tie-barred to Senate Bill 222 and both bills are tie-barred to House Bill 4075, which would amend the Public Health Code to require a sentencing court to impose licensing sanctions for certain drug violations. The bills would take effect January 1, 1994.

Senate Bill 222 would amend the Michigan Vehicle Code (MCL 257.8a et al.) to require the secretary of state to suspend the driver's license of a person for certain drug-related offenses pursuant to House Bill 4075, and maintain a central file of the names of all persons convicted on a controlled substance or androgenic anabolic steroid offense for which licensing sanctions would be required under House Bill 4075.

Central File. The act currently requires the secretary of state to maintain a central file of the names of persons who possess an operator's or chauffeur's license, and all nonresident drivers against whom a civil infraction determination was entered and who failed to comply with an order or judgment imposed under the act. The central file must provide an individual, historical driving record for each person with respect to accidents, moving violations, and revocations and suspensions of the person's driving privileges. The bill would require that the central file include the names of persons convicted of a controlled substance or androgenic anabolic steroid offense subject to license suspension under House Bill 4075 and that it provide an individual, historical record of these convictions.

License Denial. The secretary of state could not issue a driver's license to an unlicensed person who

was convicted of violating the provisions of House Bill 4075 relating to the use of a controlled substance or androgenic anabolic steroid. A license would have to be denied for a length of time that corresponded to the period of suspension applicable to a licensed driver who committed the offense.

License Suspensions for Drug-Related Offenses.

The bill would require the secretary of state, upon receiving an abstract of conviction, to impose the license suspensions outlined in House Bill 4075 for a controlled substance or steroid offense. However, a suspension would have to be imposed regardless of whether the sentencing court ordered the licensing sanctions specified in House Bill 4075. In addition, a license suspension would have to begin when the person was otherwise eligible for a license if at the time of the violation for which suspension was being imposed 1) the person had been under the influence of a controlled substance or a combination of alcohol and a controlled substance, or 2) due to consumption of a controlled substance or a combination of this and alcohol, the person's ability to drive a motor vehicle had been visibly impaired.

Notwithstanding other provisions of the act, however, the secretary of state would not have to suspend a person's driver's license if he or she were sentenced to imprisonment for life without opportunity for parole.

For any of these offenses, or for an attempt or conspiracy to commit any of them, the secretary of state, regardless of whether the sentencing court ordered licensing actions, would have to suspend a person's driver's license--for a period equal to or greater than the period of a suspension prescribed for the violation--either for 1) six months, if he or she had no prior convictions within seven years, or 2) one year, if the person had one or more prior convictions within seven years. The same suspension periods would apply to a person who violated a law of another state that prohibited conduct prohibited under the Michigan laws. Also, the provisions that currently allow for the issuance of a restricted license for certain alcohol- or drug and alcohol-related driving offenses--and that would apply to a controlled substance or steroid offense under House Bill 4075--would apply to the issuance of a restricted license under these circumstances. However, a person who was aggrieved by a final decision of the secretary of state in suspending or

denying a license under these provisions could not petition the court to review the decision.

Reinstatement fee. A person whose driver's license was suspended, revoked or restricted under the bill's provisions would have to pay a license reinstatement fee of \$125 to the secretary of state before a license was issued or returned to the person. (The fee currently applies to suspension, revocations and restrictions required or allowed under the act.) Of this fee, \$95 would have to be allocated to the Department of State and \$30 would have to be deposited by the treasury department in the special restricted fund that would be created by the bill.

Creation of restricted fund. The bill would create the Drug Case Information Management Fund as a separate fund in the state treasury, whose purpose would be to help defray the costs of complying with requirements for timely management and reporting to the secretary of state information about drug violations or attempted violations pursuant to House Bill 4075 or a similar local ordinance.

Money in the fund could only be spent as follows. The state court administrator, at the Michigan Supreme Court's direction and upon confirmation of the amount by the state treasurer, would have to distribute from the fund the total amount available in a fiscal year to each circuit of the circuit court, each district of the district court, and each probate court as specified. The state court administrator, after costs were reimbursed as specified, would have to distribute the balance of the fund annually after costs were disbursed to each district or circuit of the district/circuit courts and each probate court in an amount proportionate to the number of cases in which a defendant was charged with violating the provisions of House Bill 4075 in each court compared to the total number of these cases in all the courts, annually, as certified by the state court administrator. The state court administrative office would have to be reimbursed annually from the fund for all reasonable costs associated with administering these provisions, including judicial and staff training, on-site management assistance, forms development and conversion, and software development and conversion.

License Suspensions for OWI. The act currently requires that for a first-time violation of "operating while impaired" (OWI) due to consumption of a combination of intoxicating liquor and a controlled substance, the secretary of state (upon a court's

order) must suspend the person's driver's license for at least 90 days, up to one year. For operating while impaired by consumption of a controlled substance, no licensing suspension is now required. The bill would raise the minimum license suspension that the secretary of state would have to impose for an OWI violation involving drugs and alcohol from 90 days to at least six months; also, for an OWI violation involving only a controlled substance, a license suspension of at least six months (up to one year) would have to be imposed.

The bill provides a procedure that a court would have to follow in the prosecution of a person for a drug- or drug and alcohol-related violation, and would require a court to report a finding made by a jury or the court as specified to the secretary of state. If a court found compelling circumstances sufficient to warrant the issuance of a restricted license by the secretary of state, this could be ordered by the court.

Other provisions. The act currently provides that a court may not submit, and the secretary of state must discard and not enter on a person's master driving record, an abstract for a conviction, civil infraction determination, or similar judgment for certain minor violations on or near roadways, including those by pedestrians, passengers (presumably of vehicles) or those riding on bicycles. The bill would exempt from this provision an attempt to violate, a conspiracy to violate, or a violation of the provisions of House Bill 4075 or a similar local ordinance or law of another state.

Senate Bill 267 would amend the Code of Criminal Procedure (MCL 769.1e) to specify that, if a Michigan law required the court to deny the issuance of a driver's license, or to revoke, suspend or restrict a person's license for a violation of a criminal law or a substantially corresponding local ordinance, the court would have to impose the license sanction provided by law for the violation. The licensing sanctions to which the bill would apply would include, but would not be limited to, the sanctions that would be required under House Bill 4075 and Senate Bill 222 for controlled substance, steroid and alcohol offenses. The bill also would require a court to report to the secretary of state a finding made by the court or a jury of whether a drunk driving violation involved alcohol, drugs, or both.

HOUSE COMMITTEE ACTION:

The House Judiciary Committee adopted substitutes for both bills that differ from the versions passed by the Senate. Substitute H-6 for Senate Bill 222 added language that would provide for the creation of a special Drug Case Information Management Fund into which a portion of the \$125 reinstatement fee (paid by someone who had lost his or her license under the provisions of the bills and wished to have it reinstated) would be paid; the fund would be used to help defray certain administrative court costs involving drug violators convicted under the bills' provisions. The substitute for Senate Bill 222 also includes a provision clarifying that the secretary of state would not be required to suspend the driver's license of someone sentenced to life imprisonment without possibility of parole. In addition, references and tie-bars to Senate Bills 221 and 223 which were included in the Senate-passed versions of both bills were replaced with references/tie-bars to House Bill 4075. And finally, effective dates for both bills were changed in the House substitutes to January 1, 1994, from October 1, 1993, as specified in the Senate-passed versions of them.

BACKGROUND INFORMATION:

The concept embodied in the bills is also contained in House Bills 4074 and 4075, and Senate Bills 221 and 223. Senate Bills 221 and 223 have passed the Senate and are currently awaiting action in the House Judiciary Committee, while the two House bills were recently reported from the House Transportation Committee and are pending before the full House. However, the sponsors of both the House and Senate bills have agreed to pursue the legislation via a combination of Senate Bills 222 and 267 and House Bill 4075.

FISCAL IMPLICATIONS:

The Department of State estimates it would incur approximately \$500,000 in administrative costs to implement the bills, based on an anticipated volume of 19,000 drug-related convictions; in the second year after implementation, the department expects its costs would rise to \$601,000. The department says that although the \$125 driver's license reinstatement fee specified in Senate Bill 222 should provide enough revenue to cover its additional duties under the bills, it expects that a small percentage of this money would be collected in the

first year of implementation. Any costs not covered by fees would have to be paid out of other departmental funds. (10-20-93)

The Department of Transportation says it could forfeit up to \$15 million in federal transportation funds for the 1993-94 fiscal year if the bills are not enacted by April 1, 1993, and possibly additional funds in future years. (10-1-93)

ARGUMENTS:

For:

Drug trafficking and abuse have become perhaps the most threatening social problem in this nation during the last decade. Illegal use of controlled substances such as cocaine destroys the lives (and families) of abusers, while drug trafficking contributes significantly to the crime rate. The bills could help to minimize the use of drugs throughout the state by providing for the suspension of a person's driver's license if he or she were convicted of any of the drug violations specified in House Bill 4075. While threatening drug dealers and others who deliver drugs with license suspension probably would not deter them from their illegal activities (as such a risk would seem trivial next to the money that could be made in selling drugs), it could help reduce drug dealing and use by those who do it for fun or small amounts of money. Especially with regard to young people, the threat of a long suspension of driving privileges could act as a deterrent from even casual involvement with drugs.

These Senate bills and House Bill 4075 are patterned after federal regulations that require states to adopt laws that impose a minimum of six months license suspension for persons convicted of drug violations. In addition, Senate Bill 222 would require six-month license suspension for OWI violations involving only drugs and raise the minimum suspension requirement that now applies for OWI offenses involving the combination of alcohol and drugs from 90 days to at least six months. Failure to adopt this legislation not only would send the wrong message to people who think involvement with drugs for fun and profit has no consequences; it could also result in Michigan forfeiting about \$15 million in federal matching funds for transportation projects.

Response:

License suspension has, particularly in the case of drunk drivers, proved to be an ineffective deterrent. Allowing persons convicted of drug crimes the

ability to obtain restricted licenses would only weaken what is already a feeble deterrent.

Against:

Earlier versions of the bills proposed suspending the driver's license of a person who was convicted of using drugs in or near a motor vehicle. Expanding the concept of license suspension for drug violations that occur anywhere (for instance, smoking marijuana in one's home) goes well beyond the original scope of this legislation. Obviously, the pernicious influence of drugs in society and the huge impact it has on people's lives, both economically and socially, calls for positive solutions. But suspending or denying a driver's license of someone convicted under the provisions of House Bill 4075 (to which both bills are tie-barred) could be ruled unconstitutional and may only serve to encourage such people to drive illegally.

Response:

The tragic impact of drug use in American society today demands that more stringent measures be taken to attack this problem. Perhaps it can be said that, realistically, such penalties will not affect those hard-core drug traffickers who have fed off the weaknesses of others. On the other hand, young people who are non-users but very susceptible to peer influence or who have only minor involvement in drugs could be swayed from partaking in such activities if they knew that getting caught could mean the temporary loss of driving privileges. And in one sense, the ability to drive a motor vehicle symbolizes what it means to live in a free society. But freedom requires responsibility. Adopting the bills would emphasize that the privilege to move about freely by driving a motor vehicle is dependent not only on how knowledgeable and able one is to operate a vehicle in a safe and responsible way, but also on how one responds to the question of whether or not to be involved with drugs.

Against:

The federal government is simply overreaching its authority by imposing such a requirement on states and threatening them with economic sanctions if they fail to adopt this law. While many people understand the threat posed by drug trafficking and use to individuals and society, especially of addictive drugs like cocaine and heroine, they fear the approach taken in these bills and House Bill 4075 to address the problem is simplistic at best. Penalizing those who violate drug laws with license suspensions and possible jail terms, and especially for violations

that occur apart from driving, not only could lead to more people driving illegally but also would contribute to overcrowding in state prisons. Perhaps worse, the bills would encourage law enforcement agencies to pursue those who use marijuana, which some people believe presents less of a threat to human health and society than even alcohol but which continues to be stigmatized by society in general.

Response:

Studies have shown prolonged marijuana use to be damaging not only to the lungs but also to the brain. Moreover, although marijuana is not as powerfully addicting as cocaine or heroine, some studies indicate that persons addicted to the more powerful drugs initially used marijuana (often, as teenagers), then later switched to one of the more potent drugs when the high produced by marijuana no longer was satisfying. It seems completely disingenuous to argue that marijuana use contributes little if anything to America's current drug problem.

Against:

Although proponents of the bills argue that Michigan could forfeit millions of dollars in federal transportation funds if it fails to enact such legislation, the federal government has given all states the opportunity to avoid this possibility by adopting a resolution opposing the enactment of the federal requirement at the state level. House Concurrent Resolution 73, which has passed the House and is currently pending in the Senate Judiciary Committee, would do just this. Currently, of 34 states officially in compliance with federal requirements, 25 have adopted resolutions opposing adoption of legislation similar to these bills and thereby removed the threat of federal sanctions.

Response:

Even in the unlikely event that HCR 73 passes the Senate, Governor Engler has indicated his opposition to it while supporting the approach taken by the bills. If Michigan is going to avoid forfeiting this federal money, the current political environment here suggests this legislation will have to be the vehicle used to comply with the federal mandate.

Against:

The Department of State says that, although it should be able to cover its administrative costs in the future by using \$95 of each \$125 fee imposed to reinstate a driver's license, as provided in Senate Bill 222, it fears that revenue from this source probably will not cover its expected initial costs

under the bills. The bills should ensure that all of the department's costs under the bills will be adequately funded, whether through higher or other fees, or via supplemental general funds.

POSITIONS:

The executive office supports the bills and opposes HCR 73. (10-1-93)

The Department of State Police supports the bills. (10-20-93)

The Department of Transportation has indicated its support for the concept embodied in the bills. (9-14-93)

The Department of State supports the bills as long as its administrative costs under them will be adequately funded. (10-20-93)

The Prosecuting Attorneys Association of Michigan supports the concept of both bills, but has not yet reviewed the House substitutes for them reported from the House Judiciary Committee. (10-19-93)