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BILL ANALYSIS

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Senate Bill 104 (Substitute S-3 as passed by the Senate)  
Sponsor: Senator Valde Garcia  
Committee: Transportation

Date Completed: 8-5-08

### **RATIONALE**

Reckless driving, which involves operating a vehicle in willful or wanton disregard for the safety of people or property, is a misdemeanor under the Michigan Vehicle Code. Felonious driving under the Vehicle Code, and negligent homicide under the Michigan Penal Code, are similar violations that involve the serious injury or death of another person, respectively. Some are concerned that the standards for determining whether a person is guilty of negligent homicide or felonious driving are ambiguous, leading to inconsistent enforcement and uncertainty among members of the public as to what the penalties for certain actions will be. In addition, some have suggested that the language describing those two offenses is outmoded, and should be replaced with updated language in the Vehicle Code that would be consistent with other provisions of that statute. Further, it has been suggested that driving offenses causing death or serious injury should carry higher penalties than exist currently, to discourage reckless behavior while operating a vehicle and to reduce the number of fatal or injurious accidents.

### **CONTENT**

**The bill would amend the Michigan Vehicle Code to establish penalties for moving violations that seriously injured or killed another person, as follows:**

**-- A moving violation that caused serious impairment of a body function of another person would be**

**a misdemeanor punishable by up to 93 days and/or \$500.**

- A moving violation that caused the death of another person would be a misdemeanor punishable by imprisonment for up to one year or a maximum fine of \$2,000, or both.**
- Reckless driving that caused serious impairment of a body function of another person would be a felony punishable by imprisonment for up to five years or a fine of at least \$1,000 but not more than \$5,000, or both, and vehicle immobilization.**
- Reckless driving that caused the death of another person would be a felony punishable by imprisonment for up to 15 years or a fine of at least \$2,500 but not more than \$10,000, or both, and vehicle immobilization.**

**Also, for the offenses described above, the bill would require the Secretary of State to do the following:**

- Suspend or revoke the offender's driver license.**
- Assess a driver responsibility fee of \$1,000 each year for two consecutive years.**
- Record six points on the offender's driving record.**

**In addition, for a moving violation resulting in an at-fault collision with another vehicle, a person, or any other object, the bill would increase the civil penalty from \$100 to \$125 and require the SOS to record four points.**

**The bill would repeal sections of the Vehicle Code and the Michigan Penal Code that prescribe penalties for felonious driving and negligent homicide, respectively.**

The bill would take effect October 31, 2010, and is described in detail below.

Reckless Driving

Under the Michigan Vehicle Code, a person who drives a vehicle on a highway, parking area, frozen lake, stream or pond, or other place open to the public, in willful or wanton disregard for the safety of people or property is guilty of reckless driving, a misdemeanor punishable by imprisonment for up to 93 days or a maximum fine of \$500, or both.

Under the bill, if a person operated a vehicle in violation of this provision and by the operation of the vehicle caused serious impairment of a body function to another person, the violator would be guilty of a felony punishable by imprisonment for up to five years or a fine of not less than \$1,000 or more than \$5,000, or both.

If a person who operated a vehicle in violation of the reckless driving provision and by the operation of the vehicle caused the death of another person, the violator would be guilty of a felony punishable by imprisonment for up to 15 years or a fine of at least \$2,500 but not more than \$10,000, or both. In a prosecution under this provision, the jury could not be instructed regarding the crime of moving violation causing death.

In either case, the judgment of sentence could impose the sanction permitted under Section 625n of the Code. (Under that section, a sentence for certain violations may require the forfeiture of the vehicle if it is owned by the defendant, or the return of the vehicle to the lessor if the defendant leases the vehicle.) If the vehicle were not ordered forfeited, the court would have to order vehicle immobilization in the judgment of sentence.

In addition, the SOS would have to record six points on the person's driving record.

Moving Violation Causing Death or Serious Impairment

Under the bill, a person who committed a moving violation that caused the death of another person would be guilty of a misdemeanor punishable by imprisonment for up to one year or a maximum fine of \$2,000, or both. A person who committed a moving violation that caused serious impairment of a body function to another person would be guilty of a misdemeanor punishable by imprisonment for up to 93 days or a maximum fine of \$500, or both.

As used in these provisions, "moving violation" would mean an act or omission prohibited under the Code or a substantially corresponding local ordinance that occurred while a person was operating a motor vehicle, and for which the person was subject to a fine.

These provisions would not prohibit the person from being charged with, convicted of, or punished for any other violation of law.

In addition, the SOS would have to record six points on the person's driving record.

Suspension & Revocation

The bill would require the SOS to suspend a person's license for one year upon receiving a record of the person's conviction for a moving violation that caused serious impairment of a body function to another person or the death of another person.

Currently, the SOS must suspend a person's license for one year for a violation of the reckless driving provision (Section 626 of the Code). The bill would retain that provision, although the SOS would have to revoke a person's license and deny issuance of a license to a person who had been convicted of reckless driving that caused serious impairment of a body function to another person or the death of another person.

Driver Responsibility Fee

The Code requires the SOS to assess a driver responsibility fee of \$500 each year for two consecutive years for an individual who is found guilty of reckless driving. The bill would retain that provision but require

the SOS to assess a driver responsibility fee of \$1,000 each year for two consecutive years for reckless driving or a moving violation that caused the death or serious impairment of a body function of another person. (The \$1,000 fee currently applies to negligent homicide, manslaughter, or a felony resulting from the operation of a motor vehicle.)

#### Vehicle Immobilization; Prior Conviction

Under the Code, the court must order vehicle immobilization for a minimum of one and a maximum of three years for a conviction of certain violations related to driving while intoxicated, driving while visibly impaired, or driving after ingesting a Schedule 1 controlled substance, within 10 years after two or more prior convictions. The bill would remove the 10-year limit for the prior convictions, and would include as a "prior conviction" a conviction for reckless driving or a moving violation that caused the death or serious impairment of a body function of another person.

Such a conviction also would be considered a prior conviction in provisions concerning license suspension or revocation, and penalties for drunk driving offenses.

#### At-Fault Collision

Under the Code, if a person admits responsibility for a civil infraction "with explanation", the judge or district court magistrate may order the person to pay a civil fine of up to \$100 and court costs.

Under the bill, if the civil infraction were a moving violation that resulted in an at-fault collision with another vehicle, a person, or any other object, that fine would be increased by \$25.

Also, for a moving violation that resulted in an at-fault collision with another vehicle, a person, or any other object, the SOS would have to record four points on the operator's driving record.

#### Chemical Testing

Under the bill, a person who was arrested for reckless driving or a moving violation that caused the death or serious impairment of a body function of another person would be considered to have given consent to

chemical tests of his or her blood, breath, or urine for the purpose of determining the amount of alcohol or presence of a controlled substance in his or her blood or urine.

Currently, this applies to a person arrested for felonious driving or negligent homicide, terms the bill would replace.

#### Repeals

The bill would repeal Section 626c of the Vehicle Code, which provides that a person who operates a vehicle upon a highway or other place open to the general public or generally accessible to motor vehicles, carelessly and heedlessly in willful and wanton disregard of the rights or safety of others, or without due caution and circumspection and at a speed or in a manner that endangers or is likely to endanger any person or property, that results in the serious impairment of a body function of a person but does not cause death, is guilty of felonious driving punishable by imprisonment for up to two years or a maximum fine of \$2,000, or both.

The bill also would repeal Sections 324 and 325 of the Michigan Penal Code. Section 324 establishes a penalty for negligent homicide. Under that section, any person who causes the death of another, by operation of a vehicle at an immoderate rate of speed or in a careless, reckless or negligent manner, but not willfully or wantonly, is guilty of a misdemeanor punishable by imprisonment for up to two years or a maximum fine of \$2,000, or both.

Under Section 325, the crime of negligent homicide must be deemed to be included within every crime of manslaughter charged to have been committed in the operation of any vehicle, and in any case in which the defendant is charged with manslaughter committed in the operation of any vehicle, if the jury finds the defendant not guilty of manslaughter, it may render a verdict of guilty of negligent homicide.

MCL 257.303 et al.

#### **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 current standard for determining whether a person is guilty of negligent homicide or felonious driving is ambiguous, based on whether the person operated the vehicle in a careless, reckless or negligent manner. The language prescribing those offenses is antiquated and based on common law notions of negligence. Applying those concepts to criminal law creates some uncertainty about what constitutes a violation, leading to inconsistent enforcement of the law. For example, a driver who loses control of a car on an icy overpass and is involved in a fatal accident could have foreseen the possibility that the bridge might be icy, and therefore could be charged with negligent homicide, although most people would not consider that to be appropriate in such a case. The bill would remove that ambiguity, and instead enact prohibitions under which a person would not be guilty of a criminal offense unless a moving violation had occurred. This would reduce inconsistencies in the application of the law and clarify proscribed conduct.

The penalties under the bill also would be an increase over the current penalties for felonious driving and negligent homicide, which could deter drivers from driving recklessly. The current penalties are too low and do not adequately reflect the seriousness of the offenses. Injuries sustained in an automobile accident can have a life-changing impact on the injured party, while the person responsible for the accident might be subject only to a traffic citation. Motorcyclists in particular are at risk of serious injury or death in an accident, and although there have been various initiatives to alert drivers to motorcyclists, one effective way to reduce the incidence of accidents would be to make drivers aware that they could be subject to significant criminal penalties for a traffic violation that resulted in the serious injury or death of another person.

The penalties under the bill also would be consistent with the enhanced penalties for drivers who cause injury to or the death of a highway construction worker in a work zone or agricultural worker moving farm equipment on a highway, enacted under Public Acts 103 and 104 of 2001.

Legislative Analyst: Curtis Walker

### **FISCAL IMPACT**

The bill would have an indeterminate fiscal impact on State and local government. Local units would incur the cost of misdemeanor probation and incarceration in local facilities, which vary by county. The State would incur the cost of felony probation at an average annual cost of \$2,000, and the cost of incarceration in a State facility, at an average annual cost of \$31,000. Penal fine revenue would benefit public libraries.

There would be minimal programming costs to update the Secretary of State's computer systems in order to code them for the violations in question. The bill could generate license reinstatement fee revenue. The \$125 reinstatement fee remains within the Secretary of State's budget to be used at the discretion of the Secretary of State.

Fiscal Analyst: Joe Carrasco  
Lindsay Hollander

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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.