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**SFA**



**BILL ANALYSIS**

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Senate Bills 373 and 374 (as enrolled)  
Sponsor: Senator Bill Bullard, Jr.  
Senate Committee: Transportation and Tourism  
House Committee: Criminal Justice

**PUBLIC ACTS 103 & 104 of 2001**

Date Completed: 9-6-01

**RATIONALE**

In recent years, increases in State spending on road maintenance and repair have led to the presence of more construction crews on the roadways, which in turn has resulted in a higher incidence of accidents involving highway workers. Combined with the aggressive driving habits of many motorists, the greater presence of workers on the roadside has raised concerns about the safety of these individuals. According to the Michigan Road Builders Association, no highway construction worker was killed while on the job in the last decade until 1996. Subsequently, a highway construction foreman was killed in 1999 by a hit-and-run driver on Seaway Drive in Muskegon. Also, a 19-year-old construction firm employee was seriously injured that year when a car hit him as he was working on the northbound side of highway M-5 near interstate I-275 in Farmington Hills. Reportedly, the driver convicted of killing the construction worker in Muskegon was sentenced to 18 months in jail, and the driver who caused the injuries that left the 19-year-old construction worker a paraplegic served 45 days in jail. Some people believe that these sentences demonstrated the need for stiffer penalties for drivers who kill or injure a highway construction worker.

In addition, agricultural workers who transport farm vehicles between fields or between farms on public roads may be in greater danger of traffic accidents than at any previous time. Due to continuing development of traditionally rural areas, motor vehicles and farm implements have to share the road more than ever before. Farm implement operators reportedly have experienced increased incidents of "road rage" by motor vehicle

drivers. Some people believe that the same enhanced penalties that were advocated for injuring or killing road construction workers should apply to traffic violators who cause injury to or the death of farm vehicle operators.

Further, some aspects of the Vehicle Code's provisions requiring license denial and license revocation are duplicative, and the violations that trigger revocation are arranged in a manner that some find confusing. It was suggested that the revocation and denial provisions should be combined and that similar types of offenses should be grouped for purposes of requiring driver's license revocation.

**CONTENT**

**Senate Bill 373 amends the Michigan Vehicle Code to do the following:**

- **Prescribe penalties for committing a moving violation that has criminal penalties and causes an injury to or the death of a person working in a construction zone area or a person lawfully operating an "implement of husbandry" on a highway.**
- **Include convictions under the bill among violations that are grounds for license denial, revocation, or suspension.**
- **Establish six driver license points for violations.**
- **Revise the provision that requires license revocation for committing certain offenses or combinations of offenses within seven or 10 years.**

**-- Delete references to juvenile dispositions, and revise references to prima facie evidence and habitual violators, in license denial requirements.**

**Senate Bill 374 amends the Code of Criminal Procedure to include in the sentencing guidelines classifications a moving violation causing the death of a construction worker or an operator of an implement of husbandry.**

The bills will take effect on October 1, 2001. Senate Bill 374 was tie-barred to Senate Bill 373.

(The Vehicle Code defines "implement of husbandry" as a vehicle that is a farm tractor, a vehicle designed to be drawn by a farm tractor or an animal, a vehicle that directly harvests farm products, or a vehicle that directly applies fertilizer, spray, or seeds to a farm field.)

### **Senate Bill 373**

#### **Injury or Death to Construction Worker**

Currently under the Vehicle Code, a person responsible for a moving violation in a construction zone, at the scene of an emergency, or in a school zone from 30 minutes before school in the morning and through 30 minutes after school in the afternoon, is subject to a fine that is double the fine otherwise prescribed for that moving violation. Under the bill, committing a moving violation that has criminal penalties and causes injury to a person working in a construction zone area is a misdemeanor punishable by a maximum fine of \$1,000 and/or imprisonment for up to one year. If the violation causes the construction worker's death, it is a felony punishable by a maximum fine of \$7,500 and/or imprisonment for up to 15 years. The bill specifies that these criminal penalties do not apply if the injury or death is caused by the negligence of the person working in the construction zone.

The Code also requires that, whenever practical, signs designed in compliance with the Uniform Manual of Traffic Control Devices be placed appropriately at a construction zone by the Michigan Department of Transportation (MDOT) or road authority having jurisdiction

over the construction zone notifying vehicle operators that for the protection and safety of construction workers, the fine for a moving violation in the work area is double the fine otherwise prescribed for that moving violation. The bill deletes reference to doubled fines, and requires, instead, that the signs notify vehicle operators of the increased fines and penalties for causing injury to or the death of a person working in a construction zone area.

#### **Injury or Death to Farm Implement Operator**

The bill provides that it is a misdemeanor to commit a moving violation that has criminal penalties and causes injury to a person operating an implement of husbandry (farm implement) on a highway in compliance with the Code or a substantially corresponding local ordinance. The misdemeanor is punishable by up to one year's imprisonment and/or a maximum fine of \$1,000. If the violation causes the person's death, it is a felony punishable by up to 15 years' imprisonment and/or a maximum fine of \$7,500.

#### **License Suspension, Revocation, and Denial**

The bill requires that the Secretary of State suspend a person's driver's license for 90 days for a moving violation that has criminal penalties and injures a road construction worker or farm implement operator. License revocation and denial are required under the bill for one conviction of a moving violation that has criminal penalties and kills a road construction worker or a farm implement operator. Any combination of two or more convictions within seven year of causing either injury or death or various other offenses (as described below, under License Revocation Revisions) also will require license revocation and denial.

#### **Points**

The Code requires the Secretary of State, within 10 days after receiving a properly prepared abstract from this or another state, to record the date of conviction, civil infraction determination, or probate court disposition, and the number of points for each. Under the bill, a moving violation that injures or kills a person working in a construction zone or operating a farm implement requires six points.

### License Revocation Revisions

The Vehicle Code includes separate provisions under which the Secretary of State may not issue a driver's license to certain people and must revoke the license of some drivers. The bill deletes some of the conditions for denial of a license that duplicate conditions for revocation, and changes the revocation provision to a requirement that the Secretary of State revoke and deny issuance of a license.

In addition, the bill revises the violations and combinations of violations that require license revocation. The bill adds some offenses to that provision and regroups some of the violations that currently require license revocation.

One Conviction. Currently, license revocation is required for one conviction of drunk driving causing death or serious impairment; unlawful passing of an emergency vehicle causing the death of a police officer, firefighter, or other emergency response personnel; driving without a license and causing death or serious impairment; first- or second-degree fleeing and eluding; or negligent homicide, manslaughter, or murder resulting from the operation of a motor vehicle. The bill adds to that list one conviction for a moving violation that has criminal penalties and causes the death of a worker in a construction zone area or of a person operating a farm implement.

Two Convictions within Seven Years. Currently, the Code requires license revocation for: 1) any combination of two convictions within seven years for reckless driving or unlawful passing of an emergency vehicle causing injury to emergency response personnel; 2) two convictions of a felony in which a motor vehicle was used within seven years; or 3) any combination of two convictions within seven years for operating a vehicle while under the influence of liquor and/or drugs (OUIL), operating a vehicle while impaired by liquor and/or drugs (OWI), drunk driving causing death or serious impairment, drunk driving with a passenger under 16 years old, unlawful passing of an emergency vehicle causing the death of emergency response personnel, driving without a license and causing death or serious impairment, drunk driving of a commercial vehicle, or negligent homicide, manslaughter, or murder resulting

from the operation of a motor vehicle, or one of those convictions and one conviction for operation of a vehicle by a person under 21 with any bodily alcohol content (a "zero tolerance" violation).

The bill revises those three categories. Under the bill, license revocation and denial are required for: 1) two convictions within seven years for reckless driving; 2) any combination of two or more convictions within seven years for a felony in which a motor vehicle was used, first- or second-degree fleeing and eluding, a moving violation that has criminal penalties and causes death or injury to a worker in a construction zone area or a person operating a farm implement, unlawful passing of an emergency vehicle resulting in death or injury to emergency response personnel, driving without a license and causing death or serious impairment, or negligent homicide, manslaughter, or murder resulting from the operation of a motor vehicle; and 3) any combination of two convictions within seven years for OUIL, OWI, drunk driving causing death or serious impairment, drunk driving with a passenger under 16, or drunk driving of a commercial vehicle, or one of those convictions and one zero tolerance violation within seven years.

Three Convictions within 10 Years. Currently, the Code requires license revocation for any combination of three convictions within 10 years for OUIL, OWI, drunk driving causing death or serious impairment, drunk driving with a passenger under 16, unlawful passing of an emergency vehicle causing the death of emergency response personnel, driving without a license and causing death or serious impairment, drunk driving of a commercial vehicle, or negligent homicide, manslaughter, or murder resulting from the operation of a motor vehicle, or any combination of two of those convictions and one zero tolerance violation within 10 years. The bill removes from that list unlawful passing causing the death of emergency response personnel, driving without a license causing death or serious impairment, and negligent homicide, manslaughter, or murder resulting from the operation of a motor vehicle.

### Juvenile Dispositions; Habitual Offenders

The Code prohibits the Secretary of State from issuing a license to particular individuals,

including a person who has been convicted of or received a juvenile disposition for OUIL or OWI resulting in death or serious impairment; unlawfully passing a stationary emergency vehicle and killing a police officer, fire fighter, or other emergency personnel; driving without a license and causing death or serious impairment; or negligent homicide, manslaughter, or murder resulting from the operation of a vehicle. Under the bill, the Secretary of State still is required to deny a license upon receiving the appropriate records of conviction. The bill, however, omits reference to a juvenile disposition.

The Code also prohibits the Secretary of State from issuing a license to a person who is a habitual violator of the criminal laws relating to OUIL, OWI, or driving with an unlawful bodily alcohol content; a person who is a habitually reckless driver; or a person who is a habitual criminal. The Code provides that certain repeat offenses or combinations of offenses within seven or 10 years are prima facie evidence that a person is a habitual violator or a habitually reckless driver, and two convictions of a felony in which a motor vehicle was used are prima facie evidence that a person is a habitual criminal. Under the bill, the Secretary of State still is required to deny a license upon receiving the appropriate records of conviction. The bill, however, omits references to a habitual violator, habitual criminal, or habitually reckless driver, and references to prima facie evidence.

Under the Code, if a person's license has been revoked, the Secretary of State may not issue a license to the person until the later of the following: the expiration of at least one year after the revocation, or the expiration of at least five years after the date of a subsequent revocation occurring within seven years after any prior revocation. Also, if the revocation is based on prima facie evidence that the person is a habitual violator of the drunk driving laws, a habitually reckless driver, or a habitual criminal, he or she must rebut the presumption resulting from the prima facie evidence by clear and convincing evidence. Under the bill, the rebuttal requirement applies, instead, to a person whose license has been revoked and denied for multiple offenses within seven or 10 years. The person must rebut by clear and convincing evidence the presumption that he or she is a habitual offender. The bill specifies that the

convictions that result in the revocation and denial of a driver's license constitute prima facie evidence that the person is a habitual offender.

#### Court Records

Under the Code, court clerks are required to forward an abstract of the court record to the Secretary of State upon a person's conviction of specified violations, including a violation of the Code's provisions on approaching and passing a stationary emergency vehicle and causing the death of emergency response personnel. The bill deletes reference to this violation.

#### **Senate Bill 374**

The bill includes committing a moving violation that has criminal penalties and causes the death of a construction worker or operator of a farm implement, as provided in Senate Bill 373, in the sentencing guidelines. Under the bill, both violations are Class C felonies against a person with a statutory maximum sentence of 15 years' imprisonment.

MCL 257.303 et al. (S.B. 373)  
777.12 (S.B. 374)

#### **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**

Michigan averaged 5,500 construction zone crashes a year from 1991 to 1996, according to the Michigan Road Builders Association. The number of accidents jumped 30% to more than 7,000 in 1997 as spending on road repairs increased. A similar rise occurred in the number of injuries in construction zones, when figures jumped 25% in 1997 and 2,500 injuries were reported. In response to these increases, several initiatives were instituted to increase drivers' awareness of construction zone hazards. These measures included reducing speed limits in work zones, doubling fines for traffic violations in construction zones, adding more police to patrol construction zones during peak traffic periods, and launching the statewide "Give 'em a Brake" campaign aimed at educating motorists about construction zone safety. Despite these

efforts, many motorists ignore warning signs and drive recklessly in these areas, causing injury and death to other motorists as well as construction workers. Drivers who recently were convicted of either killing or seriously injuring construction workers received comparatively minor penalties. Judges and prosecutors have few tools to use to crack down on aggressive and reckless drivers. By prescribing specific felony penalties for committing a moving violation that has criminal penalties and injures or kills a construction zone worker, the bills establish tough new standards that should serve as a deterrent to driving carelessly in a construction zone.

### **Supporting Argument**

Commercial and residential development of traditionally rural land has resulted in changes in a number of public policy areas. For instance, land use, taxation, and natural resource issues typically are encountered with this increasing urban and suburban sprawl. In addition, as city and suburban lifestyles encroach on rural territory and customs, a culture clash between city and country also sometimes develops. This conflict can be observed in road usage and traffic patterns. Agricultural workers long have used public highways to drive farm implements between fields or between farms. These vehicles are usually quite slow-moving and often are large and, consequently, can impede the flow of traffic on rural roads. As traffic volume increases on those roads, partially as a result of increased development, more motorists who are not used to rural driving encounter farm implements. Farm workers suggest that, as a result, there has been an increase in a type of "road rage" in which impatient drivers may endanger farm implement operators lawfully using the State's highways. By enacting criminal penalties for committing a moving violation that injures or kills a farm implement operator, Senate Bill 373 should highlight the need for motorists to share the road safely with farm vehicle drivers. The bill also may deter unsafe driving practices in the vicinity of moving agricultural vehicles.

### **Supporting Argument**

In recent years, as penalties for driving violations causing death or serious injury have been increased or established, they often have been added to the license revocation provisions of the Michigan Vehicle Code.

Some of the offenses that have been included in the combinations of violations that trigger license revocation involve alcohol-related driving offenses and some do not. Apparently, this has caused confusion in regard to the steps that someone must take in order to have a license reinstated after a period of revocation or denial. According to the director of the Department of State's Driver License Appeal Division, when a person's license has been revoked for an alcohol-related driving violation, he or she must comply with certain requirements related to alcohol abuse treatment and may be required to equip his or her vehicle with an ignition locking device, which prevents the vehicle from being operated by someone who has alcohol in his or her system. Since driving violations that do not involve alcohol were combined with alcohol-related violations in the license revocation provisions, some drivers whose licenses were suspended for violations that did not involve alcohol have been required to meet the same standards for license reinstatement as imposed on motorists who lost their license for alcohol-related violations.

By regrouping driving violations that require license revocation, Senate Bill 373 will avert this confusion, because alcohol-related offenses are segregated from other driving violations.

### **Opposing Argument**

The aim of protecting highway construction workers more effectively is laudable, but the bills' approach may not be effective. As expressed in an *Ann Arbor News* editorial (July 6, 2001), increasing criminal penalties as a means of deterring traffic injuries to or the death of construction workers "assumes motorists are consciously accepting the risk they face under the current penalty but would be deterred by still more serious consequences". As the editorial points out, "no driver assesses the odds of injuring a construction worker against the legal penalty for causing such harm before proceeding into a work area". Rather than beefing up criminal penalties, more effective approaches to protecting road workers might involve enhancing visibility of the zones and workers, improving safety barriers, installing devices that force traffic to slow down, and increasing law enforcement presence in road construction areas.

**Response:** The bills do not represent the only effort undertaken to protect road construction workers. The *Ann Arbor News* editorial also points out that, "state transportation officials have allotted money to the state police to increase patrols in the construction zones".

### **Opposing Argument**

A driver who injures or kills an individual can be charged under various other sections of the Michigan Penal Code. For example, someone who operates a vehicle at an immoderate speed or in a careless, reckless, or negligent manner, but not willfully or wantonly, and causes the death of another individual is guilty of a misdemeanor punishable by imprisonment for up to two years and/or a maximum fine of \$2,000 (MCL 750.324). Also, a driver can be charged with manslaughter, which is a felony punishable by imprisonment for up to 15 years and/or a fine of up to \$7,500 (MCL 750.321). Alternatively, a driver can be prosecuted for first-degree murder (punishable by mandatory life imprisonment) if the act was premeditated (MCL 750.316) or second-degree murder (punishable by any term of years) (MCL 750.317). In addition, a driver who violates the Vehicle Code's OUIL or OWI prohibitions and causes the death of another person is guilty of a felony punishable by imprisonment for up to 15 years and/or a fine of at least \$2,500 but not more than \$10,000 (MCL 257.625).

**Response:** The penalties in Senate Bill 373 give prosecutors and judges additional flexibility in charging and punishing offenders. The penalties also are consistent with those established by Public Act 458 of 2000 for drivers who injure or kill a police officer, firefighter, or other emergency response personnel in the immediate area of a stationary authorized emergency vehicle. In addition, the bill requires signs to notify motorists of the penalties, which may help safeguard highway workers.

Legislative Analyst: P. Affholter

### **FISCAL IMPACT**

The bills will have an indeterminate fiscal impact on State and local government.

There are no data available to indicate how many offenders a year will be convicted of a criminal moving violation causing injury to a

construction worker or an operator of an implement of husbandry. The Michigan Road Builders Association reports that two construction workers in 1996 and one in 1999 were killed by motorists. According to Michigan State Police *Michigan Traffic Crash Facts*, of all accidents involving farm equipment, one in 1998 and none in 1999 led to the death of a farm vehicle operator.

An offender causing injury to a construction worker or farm vehicle operator will receive a misdemeanor sentence of 0-12 months. Offenders convicted of a misdemeanor are subject to probation or incarceration in a local facility. Local units incur the cost of probation as well as the cost of incarceration, which may vary between \$27 and \$62 per day.

An offense causing death is incorporated into the sentencing guidelines as a Class C felony, which has a sentencing guideline minimum range from 0-11 months to 62-114. If one assumes that one offender a year will be convicted of causing death to a construction worker or farm vehicle operator and receives the longest minimum sentence, given that the annual average cost of incarceration is \$22,000, the cost to the State will be \$209,000.

Senate Bill 373 also will have an indeterminate fiscal impact on the Department of State depending on the extent to which the bill affects the number of driver license revocations due to convictions and/or the assignment of points. Drivers are assigned points for violations of the Michigan Vehicle Code. Earning 12 points for such violations may result in suspension or revocation of a driver's license. Under the bill, the license sanction for injury or death to a construction worker or farm implement operator will include six points. The reinstatement fee for a driver license is \$125 and benefits the Departments of State and Transportation and various drunk driving-related funds.

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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.