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 BILL ANALYSIS

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Senate Bill 104 (as enacted)  
Senate Bill 1576 (as enacted)  
Senate Bill 1578 (as enacted)  
Senate Bill 1580 (as enacted)  
Senate Bill 1581 (as enacted)  
Sponsor: Senator Valde Garcia (S.B. 104, 1576 & 1578)  
Senator Michael Switalski (S.B. 1580)  
Senator Jason E. Allen (S.B. 1581)

Senate Committee: Transportation  
House Committee: Transportation

Date Completed: 6-29-09

### **CONTENT**

**Senate Bill 104 amends the Michigan Vehicle Code to establish penalties for moving violations that seriously injure or kill another person, as follows:**

- A moving violation that causes serious impairment of a body function of another person is a misdemeanor punishable by up to 93 days or a maximum fine of \$500, or both.
- A moving violation that causes the death of another person is a misdemeanor punishable by imprisonment for up to one year or a maximum fine of \$2,000, or both.
- Reckless driving that causes serious impairment of a body function of another person is a felony punishable by imprisonment for up to five years or a fine of between \$1,000 and \$5,000, or both, and vehicle immobilization.
- Reckless driving that causes the death of another person is a felony punishable by imprisonment for up to 15 years or a fine of \$2,500 to \$10,000, or both, and vehicle immobilization.

The bill also does the following:

- Requires the Secretary of State (SOS) to assign six points to a person's driving record for any of the above offenses, and four points for a moving violation resulting in an at-fault collision.
- Requires a person convicted of any of the above offenses to pay a \$1,000 driver responsibility fee each year for two consecutive years.
- Requires the SOS to revoke a person's license if he or she is convicted of reckless driving that causes the death or serious impairment of a body function of another person.
- Requires the SOS to suspend a person's license for one year if he or she is convicted of a moving violation that causes the death or serious impairment of a body function of another person.
- Eliminates the offenses of felonious driving and negligent homicide.
- Requires the SOS to suspend a person's license for one year if he or she is convicted of operating a vehicle which a blood alcohol content of 0.17 grams or more.

**PUBLIC ACT 463 of 2008**  
**PUBLIC ACT 468 of 2008**  
**PUBLIC ACT 442 of 2008**  
**PUBLIC ACT 446 of 2008**  
**PUBLIC ACT 465 of 2008**

- **Permits the SOS, 45 days after suspending a person's license under that provision, to issue the person a restricted license to operate a vehicle with an ignition interlock device.**
- **Requires the civil fine for a moving violation that resulted in an at-fault collision to be increased by \$25, not to exceed \$100.**

**Senate Bill 1576 amends the Insurance Code to require the automobile insurance placement facility, as part of its merit-based insurance plan, to include a surcharge for a moving violation that causes the death of another person.**

**Senate Bill 1578 amends the Adult Foster Care Facility Licensing Act to prohibit an adult foster care facility from employing or contracting with an individual who provides services to or has regular access to residents of the facility if the individual was convicted of a moving violation that caused the death of another person within the previous five years.**

**Senate Bill 1580 amends the Mental Health Code to prohibit psychiatric hospitals and intermediate care facilities for people with mental retardation from employing, independently contracting with, or granting clinical privileges to an individual who provides services to or has regular access to patients or residents, if the individual was convicted of a that caused the death of another person within the previous five years.**

**Senate Bill 1581 amended Part 821 (Snowmobiles) of the Natural Resources and Environmental Protection Act (NREPA) to require the SOS to order a person not to operate a snowmobile for one year if he or she has been convicted of reckless driving that causes the death of or serious injury to another person.**

Senate Bills 1576, 1578, and 1581 were tie-barred to Senate Bill 104.

Senate Bill 1581 took effect on January 1, 2009. The remaining bills will take effect on October 31, 2010. The bills are described in detail below.

### **Senate Bill 104**

#### 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, a person who violates that provision, and by the operation of the vehicle causes serious impairment of a body function to another person, is guilty of 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.

The bill specifies that the judgment of sentence may impose the sanction permitted under Section 625n of the Code. (Under that section, a judgment of 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.)

In addition, under the bill, a person who operates a vehicle in violation of the reckless driving provisions, and by the operation of the vehicle causes the death of another person, is 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. The judgment of sentence may include forfeiture of the vehicle, as provided in Section 625n of the Code.

Under both of these provisions, if the vehicle is not ordered forfeited, the court must order vehicle immobilization, as provided in Section 904d, in the judgment of sentence.

In a prosecution under those provisions, the jury may not be instructed regarding the crime of moving violation causing death.

#### Violation Causing Death or Impairment

Under the bill, a person who commits a moving violation that causes the death of another person is guilty of a misdemeanor punishable by imprisonment for up to one year or a maximum fine of \$2,000, or both. A person who commits a moving violation that causes serious impairment of a body function to another person is guilty of a misdemeanor punishable by imprisonment for up to 93 days or a maximum fine of \$1,000, or both.

For the purpose of those provisions, "moving violation" means an act or omission prohibited under the Code or a local ordinance substantially corresponding to the Code that involves the operation of a motor vehicle and for which a fine may be assessed.

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

#### Driver Responsibility Fee

Under the bill, if a person is found guilty of a moving violation or reckless driving that causes the death or serious impairment of a body function of another individual, the SOS must assess a \$1,000 driver responsibility fee each year for two consecutive years.

Currently, the SOS may authorize payment of a driver responsibility fee by installment for an amount of \$500 or more, for a maximum of 12 months. The bill instead permits the SOS to authorize installment payments for a maximum

period of 24 months, and eliminates the reference to a minimum amount.

The Code requires the SOS to send two notices to a driver of a driver responsibility fee assessment. If payment of a driver responsibility fee is not received or an installment plan is not established within 30 days after the second notice, the SOS must suspend the driving privileges until the assessment and any other fees under the Code are paid.

The bill adds that if the individual's license to operate a motor vehicle is not otherwise required to be denied, suspended, or revoked, the SOS must reinstate the individual's driving privileges if he or she requests an installment plan and makes proper payment under the plan. Fees required to be paid for the reinstatement of driving privileges must be included in the amount to be paid under the installment plan, at the individual's request. If the individual establishes a payment plan under these provisions but fails to make full or timely payments under the plan, the SOS must suspend the individual's driving privileges. The SOS may reinstate a license under these provisions only once.

#### License Suspension & Revocation

The Code requires the SOS to revoke or suspend a person's operator's license or chauffeur's license if the person has been convicted of certain violations or combinations of violations of State law, a local ordinance substantially corresponding to a State law, or a law of another state substantially corresponding to a State law. The bill extends that requirement to a violation of a U.S. law that substantially corresponds to a State law.

The bill also requires the SOS to revoke a person's license if he or she is convicted of reckless driving that causes the death or serious impairment of a body function of another person.

The bill requires the SOS to suspend a person's license for one year if the person is convicted of a moving violation that

causes the death or serious impairment of a body function of another person.

### Driving while Intoxicated

Under the Code, the SOS must suspend a person's license for 180 days if the person is convicted of operating a vehicle while intoxicated. For the purposes of that provision, "operating while intoxicated" means either of the following:

- The person is under the influence of alcohol, a controlled substance, or a combination of alcohol and a controlled substance.
- The person has an alcohol content of 0.08 gram or more (or 0.10 gram or more beginning October 1, 2013) per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.

Under the bill, a person also is considered to be operating a vehicle while intoxicated if he or she has an alcohol content of 0.17 gram or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.

The bill requires the SOS to suspend a person's license for one year if the person is convicted of operating a vehicle with that higher blood alcohol content described above, if the person has no previous convictions within seven years or not more than two convictions within 10 years. The SOS may issue the person a restricted license after the first 45 days of suspension.

The bill also requires the Department of State to order a person convicted of operating a vehicle while intoxicated with an alcohol content of 0.17 gram or more per 100 milliliters of blood, 210 liters of breath, or 67 milliliters of urine, not to operate a motor vehicle under a restricted license unless the vehicle is equipped with an ignition interlock device approved, certified, and installed as required under the Code. The interlock device may be removed after the device provider gives the Department verification that the person has operated the vehicle with no instances of reaching or exceeding a blood

alcohol level of 0.025 gram per 210 liters of breath.

If an individual violates the conditions of the restricted license or operates or attempts to operate a motor vehicle with an alcohol level at or above that limit, the SOS must impose an additional period of suspension and restriction as described above. This provision does not apply to a start-up test failure within the first two months after installation of the device. ("Start-up test failure" means that term as defined in the Administrative Code, i.e., the device has prevented the motor vehicle from being started. Multiple unsuccessful attempts at one time to start the vehicle are treated as one start-up test failure.)

In addition, if a person who is permitted to operate only a motor vehicle equipped with an ignition interlock device is convicted of operating a vehicle on which an ignition interlock device is not properly installed, the court must order vehicle immobilization for not less than 90 days or more than 180 days.

If the person obtains a restricted operator's or chauffeur's license from the SOS and an ignition interlock device is properly installed on the vehicle, the court must suspend the immobilization order. The court may reinstate vehicle immobilization if the ignition interlock device is tampered with, circumvented, or disabled, or if the person's restricted license is suspended or revoked.

Under the Code, if a person is convicted of operating a vehicle while intoxicated, he or she is guilty of a misdemeanor punishable by one or more of the following:

- Community service for up to 360 hours.
- Imprisonment for up to 93 days.
- A fine of not less than \$100 or more than \$500.

Under the bill, if a person is found guilty of operating a vehicle with an alcohol content of 0.17 gram or more per 100 milliliters of blood or the commensurate

level in his or her breath or urine, the maximum term of imprisonment is increased to 180 days, and the fine increased to not less than \$200 or more than \$700.

#### Vehicle Immobilization

Under the Code, for a conviction of certain offenses involving driving while intoxicated or driving while visibly impaired due to the consumption of alcohol or a controlled substance within 10 years of two or more prior convictions, the court must order vehicle immobilization for not less than one year or more than three years. The bill retains that provision, but removes the 10-year limit on prior convictions.

For the purpose of those provisions, "prior conviction" means a conviction of specified offenses, whether under a law of this State or a substantially corresponding local ordinance or law of another state. The bill includes within that definition a law of the U.S. substantially corresponding to a law of this State, as well as a moving violation or reckless driving that causes the death or serious impairment of a body function of another person.

#### Points on Driving Record

The bill requires the SOS to record six points on a person's driving record for a moving violation that causes the death or serious impairment of a body function of another person, or for reckless driving that causes the death or serious impairment of a body function of another person.

The SOS must record four points on a person's driving record for a moving violation resulting in an at-fault collision with another vehicle, a person, or any other object.

#### Civil Fine

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 was a moving violation that resulted in an at-fault collision with another vehicle, a person, or any other object, that fine must be increased by \$25, but the total fine may not exceed \$100.

As used in these provisions, the bill defines "moving violation" as an act or omission prohibited under the Code or a local ordinance substantially corresponding to the Code that involves the operation of a motor vehicle and for which a fine may be assessed.

#### Other Provisions

Under the Code, a person who is arrested for felonious driving or negligent homicide or certain other offenses is 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 or both in his or her blood or urine or the amount of alcohol in his or her breath. In this and other provisions of the Code, the bill deletes references to felonious driving and negligent homicide, and refers instead to a moving violation or reckless driving that causes the death or serious impairment of a body function of another person.

#### Repeals

The bill repeals 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 repeals 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.

#### **Senate Bill 1576**

The Insurance Code provides for the creation of an automobile insurance placement facility to guarantee that automobile insurance coverage will be available to any person who is unable to obtain insurance through ordinary methods.

The facility must develop a secondary or merit rating plan for automobile insurance. As part of that plan, the facility must provide for premium surcharges for any or all coverages (other than comprehensive coverage) for convictions of one or more specific violations.

Under the bill, the facility must provide surcharges under that provision for a moving violation that causes the death of another person.

#### **Senate Bill 1578**

Under the Adult Foster Care Facility Licensing Act, an adult foster care facility may not employ or contract independently with an individual who regularly has direct access to or provides direct services to

residents of the facility if the individual has been convicted of one or more crimes specified in the Act.

Under the bill, that provision applies if an individual has been convicted of a moving violation causing death within the five years immediately preceding the date of application for employment or the date of the execution of the independent contract.

Under the Act, if the Michigan Department of State Police (MSP) or the FBI charges a fee for conducting the initial background check required under the Act, the charge must be paid by or reimbursed by the Department of Human Services (DHS) using Federal funds as provided to implement a pilot program for national and State background checks on employees of long-term care facilities or providers with direct access to patients under Section 307 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003.

The bill retains the requirement that the DHS pay for or reimburse the cost of the background checks, but removes the reference to the Federal funds.

#### **Senate Bill 1580**

Under the Mental Health Code, a psychiatric facility or intermediate care facility for people with mental retardation may not employ, independently contract with, or grant clinical privileges to an individual who regularly has direct access to or provides direct services to patients or residents in the facility if the individual meets one or more specific conditions or has been convicted of one or more crimes specified in the Code.

Under the bill, that provision also applies if, within the five years immediately preceding the date of application for employment or clinical privileges or the date of the execution of the independent contract, the individual has been convicted of a moving violation causing death.

The Code provides an exemption from that requirement for an individual who was

employed by, under independent contract to, or granted clinical privileges in a psychiatric facility or intermediate care facility for people with mental retardation before April 1, 2006. By April 1, 2008, an individual exempt under that provision was required to give the MSP a set of fingerprints, and the MSP was required to enter those fingerprints into the automated fingerprint identification system database established under the Code. The bill extends that deadline to April 1, 2011.

Under the Code, if the MSP or the FBI charges a fee for conducting the initial background check, the charge must be paid by or reimbursed by the DHS using Federal funds to implement a pilot program for national and State background checks on employees of long-term care facilities or providers with direct access to patients under Section 307 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003.

The bill instead requires the psychiatric facility or intermediate care facility to pay the cost of the charge.

#### **Senate Bill 1581**

Under Part 821 of NREPA, if a person is convicted of certain offenses and the court has not ordered the person not to operate a snowmobile, the SOS must issue an order that the person not operate a snowmobile for a specific period of time, depending on the violation.

The bill requires the SOS to order a person not to operate a snowmobile for one year for a violation of Section 626(3) or 626(4) of the Michigan Vehicle Code (reckless driving that causes serious impairment of a body function or the death of another individual).

MCL 257.303 et al. (S.B. 104)  
500.3341 (S.B. 1576)  
400.734b (S.B. 1578)  
330.1134a (S.B. 1580)  
324.82147 (S.B. 1581)

Legislative Analyst: Curtis Walker

## **FISCAL IMPACT**

### **Senate Bill 104**

The bill will have an indeterminate fiscal impact on State and local government. Local units will incur the costs of misdemeanor probation and incarceration in local facilities, which vary by county. The State will 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 \$32,000. Penal fine revenue will benefit public libraries.

There will 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 may 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.

### **Senate Bill 1576**

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

### **Senate Bills 1578 & 1580**

It is unlikely that the bills will have any fiscal impact on State or local government. The bills merely add an additional specification to background checks already required of prospective employees.

### **Senate Bill 1581**

The bill will 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.