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House Bill 4567 (Substitute H-2 as passed by the House)
House Bill 4568 (Substitute H-2 as passed by the House)
Sponsor: Representative Eileen Kowall
House Committee: Criminal Justice
Senate Committee: Judiciary

Date Completed: 2-18-14

CONTENT

House Bill 4567 (H-2) would amend the Michigan Vehicle Code to double the maximum prison term for operating a motor vehicle while intoxicated or visibly impaired by alcohol or a controlled substance, causing the death or serious impairment of a body function of another person, if the offender had a bodily alcohol content (BAC) of 0.17 gram or more and committed the offense within seven years of a prior conviction. Also, as part of the sentence, the bill would allow vehicle forfeiture or require vehicle immobilization if the court did not order the vehicle to be forfeited.

House Bill 4568 (H-2) would amend the Code of Criminal Procedure to include the felonies proposed by House Bill 4567 (H-2) in the sentencing guidelines.

Both bills would take effect on April 1, 2014. House Bill 4568 (H-2) is tie-barred to House Bill 4567.

House Bill 4567 (H-2)

Violation Causing Death

Under the Vehicle Code, a person who operates a motor vehicle under any of the following conditions and causes the death of another person, is guilty of a felony punishable by up to 15 years' imprisonment and/or a fine of not less than \$2,500 or more than \$10,000:

- He or she is intoxicated (i.e., is under the influence of alcohol, a controlled substance, and/or other intoxicating substance, or has a BAC of 0.08 or more).
- He or she is visibly impaired by alcohol, a controlled substance, and/or other intoxicating substance.
- He or she has in his her or her body any amount of a Schedule 1 controlled substance or cocaine.

The penalty is up to 20 years' imprisonment and/or a fine of between \$2,500 and \$10,000 if the person, at the time of the violation, is operating a motor vehicle in violation of Section 653a of the Code and causes the death of a police officer, firefighter, or other emergency personnel. (Section 653a requires a driver to exhibit due care and caution, including moving over a lane or two widths of a vehicle if possible, upon approaching and passing a stationary authorized emergency vehicle.)

Under the bill, if the violation occurred while the person had a BAC of 0.17 gram or more per 100 milliliters of blood, 210 liters of breath, or 67 milliliters of urine, and within seven years of a prior conviction, the felony would be punishable by up to 20 years' imprisonment and/or a fine of between \$2,500 and \$10,000.

(The Vehicle Code's definition of "prior conviction" includes a conviction for violating any of the Code's prohibitions against operating a motor vehicle or commercial vehicle while intoxicated or impaired by alcohol, a controlled substance, and/or other intoxicating substance, or with any bodily presence of a Schedule 1 controlled substance or cocaine; negligent homicide, manslaughter, or murder resulting from the operation of a vehicle, or an attempt to commit any of those crimes; a moving violation causing death or serious impairment of a body function; or reckless driving causing death or serious impairment of a body function.)

Violation Causing Serious Impairment

Currently, a person who operates a motor vehicle under any of the following conditions and causes a serious impairment of a body function of another person, is guilty of a felony punishable by up to five years' imprisonment and/or a fine of not less than \$1,000 or more than \$5,000:

- He or she is intoxicated.
- He or she is visibly impaired by alcohol, a controlled substance, and/or other intoxicating substance.
- He or she has in his her or her body any amount of a Schedule 1 controlled substance or cocaine.

Under the bill, if the violation occurred while the person had a BAC of 0.17 or more, and within seven years of a prior conviction, the felony would be punishable by up to 10 years' imprisonment and/or a fine of between \$1,000 and \$5,000.

(The Code's definition of "serious impairment of a body function" includes, but is not limited to, one or more of the following:

- Loss of a limb or use of a limb.
- Loss of a foot, hand, finger, or thumb or the use of a foot, hand, finger, or thumb.
- Loss of an eye or ear or the use of an eye or ear.
- Loss or substantial impairment of a bodily function.
- Serious visible disfigurement.
- A comatose state that lasts for more than three days.
- Measurable brain or mental impairment.
- A skull fracture or other serious bone fracture.
- Subdural hemorrhage or subdural hematoma.
- Loss of an organ.)

Forfeiture or Immobilization

For both penalties proposed by the bill, the judgment of sentence could include forfeiture of the motor vehicle used in the offense, if the defendant owned it in whole or in part, or return of the vehicle to the lessor if the defendant leased the vehicle. If the vehicle were not ordered forfeited or returned, the court would have to order vehicle immobilization in the sentence.

House Bill 4568 (H-2)

Under the bill, operating a vehicle with a BAC of 0.17 gram or more, with a prior conviction, causing death would be a Class B felony against a person, with a statutory maximum sentence of 20 years' imprisonment.

Operating a vehicle with a BAC of 0.17 gram or more, with a prior conviction, causing serious impairment would be a Class D felony against a person, with a statutory maximum sentence of 10 years' imprisonment.

The bill also would add the phrase "or with the presence of a controlled substance" to several other sentencing guidelines descriptions for operating a vehicle while intoxicated or impaired.

MCL 257.625 (H.B. 4567)
777.12f (H.B. 4568)

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

As described above, the bills would add language to the impaired driving provisions of the Michigan Vehicle Code and the Code of Criminal Procedure that would increase the maximum prison sentence for those convicted of operating a vehicle under the influence of alcohol, a controlled substance, or other intoxicating substance, resulting in death or bodily harm to another person. The additional sentence time for these offenses would cost the State approximately \$35,000 per prisoner per year.

Fiscal Analyst: John Maxwell

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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.