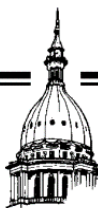




Senate Fiscal Agency
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BILL



ANALYSIS

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Senate Bill 353 (as enacted)
Sponsor: Senator Dave Robertson
Senate Committee: Judiciary
House Committee: Judiciary

PUBLIC ACT 543 of 2012

Date Completed: 8-20-13

RATIONALE

Operating a vehicle while under the influence (OUI) of alcohol or a controlled substance and operating a vehicle while impaired (OWI) due to the consumption of alcohol or a controlled substance are prohibited by the Michigan Vehicle Code and violators are subject to criminal penalties. Until recently, however, those proscriptions did not cover a driver who was under the influence of or was impaired by a nonalcoholic intoxicating substance that is not a "controlled substance" (a drug or substance included in Schedule 1 to 5 of Part 72 of the Public Health Code). Because a driver can be just as affected by such a substance as a driver is affected by alcohol, it was suggested that Michigan's laws prohibiting OUI and OWI be extended to motorists who are under the influence of, or impaired by, *any* intoxicating substance.

CONTENT

The bill amended the Michigan Vehicle Code to do the following:

- **Prohibit a person from operating a vehicle while under the influence of any intoxicating substance.**
- **Prohibit a person from operating a vehicle while impaired due to the consumption of any intoxicating substance.**
- **Prohibit a person from allowing a vehicle to be operated by a person who is under the influence of, or visibly impaired by the consumption of, any intoxicating substance.**

- **Require a jury or court to make a finding as to whether a person charged with OUI or OWI was under the influence of an intoxicating substance or a combination of alcohol, a controlled substance, or other intoxicating substance.**

The bill took effect on March 31, 2013.

The bill defines "intoxicating substance" as any substance, preparation, or a combination of substances and preparations other than alcohol or a controlled substance, that is either of the following:

- Recognized as a drug in any of the following publications or their supplements: the Official United States Pharmacopoeia, the Official Homeopathic Pharmacopoeia of the United States, or the Official National Formulary.
- A substance, other than food, taken into a person's body, including vapors or fumes, that is used in a manner or for a purpose for which it was not intended, and that may result in a condition of intoxication.

Operating While Under the Influence

The Vehicle Code prohibits a person from operating a vehicle upon a highway or other place open to the general public or generally accessible to motor vehicles if the person is operating while intoxicated. Under the bill, operating while intoxicated includes the operation of a vehicle by a person who is

under the influence of alcohol, a controlled substance, or other intoxicating substance or a combination of alcohol, a controlled substance, or other intoxicating substance. Previously, the prohibition included operating a vehicle while under the influence of alcohol, a controlled substance, or a combination of alcohol and a controlled substance.

Operating While Impaired

The bill prohibits a person from operating a vehicle upon a highway or other place open to the general public or generally accessible to motor vehicles while his or her ability to operate the vehicle is visibly impaired due to the consumption of alcohol, a controlled substance, or other intoxicating substance, or a combination of alcohol, a controlled substance, or other intoxicating substance. Previously, this prohibition applied to operating while visibly impaired due to the consumption of alcohol, a controlled substance, or a combination of alcohol and a controlled substance.

Allowing Use of Vehicle

Under the bill, the owner of a vehicle or a person in charge or in control of a vehicle may not authorize or knowingly permit the vehicle to be operated by another person upon a highway or other place open to the general public or generally accessible to motor vehicles if that other person is under the influence of, or visibly impaired by the consumption of, alcohol, a controlled substance, or other intoxicating substance or a combination of alcohol, a controlled substance, or other intoxicating substance. Previously, this applied when the other person was under the influence of alcohol and/or a controlled substance or the person's ability to operate a vehicle was visibly impaired due to the consumption of alcohol and/or a controlled substance.

Jury or Court Finding

Under the bill, if a person is charged with OUI or OWI, the court must require the jury to return a written finding as to whether the person was under the influence of a controlled substance or other intoxicating substance or a combination of alcohol, a controlled substance, or other intoxicating substance, at the time of the violation. If the court convicts the person without a jury

or accepts a plea of guilty or no contest, the court must make the finding. Previously, the jury or court had to make a finding as to whether the person was under the influence of a controlled substance or a combination of alcohol and a controlled substance.

MCL 257.625

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

Driving a vehicle while intoxicated, or while impaired by an intoxicating substance, poses a significant risk not only to the driver and his or her passengers but also to anyone else on or near the road where the person drives. This is true regardless of whether the intoxicating substance used is alcohol, a controlled substance, or a substance not listed on the Public Health Code's schedule of controlled substances. Previously, however, Michigan's OUI and OWI provisions applied only to a driver's use of alcohol or a controlled substance. Synthetic substances that are not listed on the controlled substance schedules and intoxicating substances such as aerosol sprays, glue, and lighter fluid can impair a person's reflexes and cognitive ability, both of which are crucial to operating a motor vehicle safely.

In testimony before the Senate Judiciary Committee, a Grand Blanc police officer said he had encountered several cases in which a driver's ability to operate a vehicle was impaired but the driver did not have a scheduled controlled substance or alcohol in his or her system. The officer told of responding to a car accident in which a driver was "huffing" an aerosol spray can. The driver had four spray cans in his car and 20 empty cans in the trunk. The officer also said he had experience with other cases in which drivers who were too young to drink alcohol legally had high concentrations of strong cough syrup in their systems, which impaired their ability to drive. Another former law enforcement officer recalled having pulled over a driver who was sucking on a rag soaked with lighter fluid. All of these drivers were a threat to themselves and others because they were operating vehicles while under the influence of, or while impaired by, an intoxicating

substance, but they could not be prosecuted for OUI or OWI because the substance was not on the State's list of controlled substances. By bridging the gap between impairment by controlled drugs and other intoxicating substances, the bill will help law enforcement to prosecute all impaired drivers and keep Michigan's streets safer.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill will have an indeterminate fiscal impact on State and local government. To the extent that the inclusion of any other intoxicating substance leads to an increase in OUI or OWI convictions, both the State and local units of government may incur additional costs. Local governments incur the costs of incarceration in local facilities, which vary by county. The State will incur the cost of felony probation at an annual average cost of \$2,500, as well as the cost of incarceration in a State facility at an average annual cost of \$34,000. Additional penal fine revenue will benefit public libraries.

Fiscal Analyst: Dan O'Connor

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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.