



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL ANALYSIS



Telephone: (517) 373-5383
Fax: (517) 373-1986

House Bill 4547 (Substitute H-2 as passed by the House)
House Bill 4548 (Substitute H-2 as passed by the House)
Sponsor: Representative Klint Kesto (H.B. 4547)
Representative Patrick Green (H.B. 4548)
House Committee: Law and Justice
Senate Committee: Judiciary

Date Completed: 10-9-17

CONTENT

House Bill 4548 (H-2) would amend the Michigan Vehicle Code to delay from October 1, 2018, until October 1, 2023, the date on which the bodily alcohol content (BAC) that constitutes operating while intoxicated will increase from 0.08 to 0.10.

House Bill 4547 (H-2) would amend the Code of Criminal Procedure to apply certain sentencing guidelines scores to drivers with a BAC of 0.08 or more until October 1, 2023, rather than October 1, 2018.

The bills are tie-barred, and each bill would take effect 90 days after its enactment.

House Bill 4548 (H-2)**Operating while Intoxicated**

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 he or she is operating while intoxicated. "Operating while intoxicated" means the person meets any of the following:

- 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.
- Has a BAC of 0.08 gram or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.
- Has a BAC of 0.17 gram or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine (sometimes called super drunk).

Beginning October 1, 2018, the 0.08 BAC standard described above will increase to 0.10. (The 0.10 standard was in Michigan statute before September 30, 2003, the effective date of Public Act 61 of 2003, which lowered the BAC standard to 0.08 from 0.10.)

Under the bill, the definition of "operating while intoxicated" would continue to apply to a person who had a BAC of 0.08 or more until October 1, 2023, when the BAC standard would revert to 0.10.

Authorizing Operation of a Vehicle

The Code prohibits the owner or person in charge or in control of a vehicle from authorizing or knowingly permitting it to be operated by a person who has a BAC of 0.08 or more or,

beginning October 1, 2018, a BAC of 0.10 or more. Under the bill, the prohibition would refer to a person with a BAC of 0.08 or more or, beginning October 1, 2023, a BAC of 0.10 or more.

Zero-Tolerance Offense

The Code prohibits a person who is under 21 years of age from operating a vehicle if he or she has any bodily alcohol content (which is commonly referred to as a "zero-tolerance offense"). "Any bodily alcohol content" includes a BAC of 0.02 or more but less than 0.08 or, beginning October 1, 2018, a BAC of 0.02 or more but less than 0.10. Under the bill, the term would include a BAC of 0.02 or more but less than 0.08 or, beginning October 1, 2023, a BAC of 0.02 or more but less than 0.10.

Chemical Testing for Alcohol Content

The Code specifies that its provisions pertaining to chemical testing of bodily alcohol content do not limit the introduction of any other admissible evidence bearing upon whether the person had a BAC of 0.08 or more or, beginning October 1, 2018, a BAC of 0.10 or more. Under the bill, that provision would apply to other evidence that the person had a BAC of 0.08 or more or, beginning October 1, 2023, a BAC of 0.10 or more.

Under the Code, if an operator of a vehicle refuses a chemical test or submits to a chemical test that reveals an unlawful alcohol content, the peace officer who requested the person to submit to the test must take certain actions, including confiscating the person's driver license. "Unlawful alcohol content", if the person is not under 21 or operating a commercial motor vehicle, means a BAC of 0.08 or more or, beginning October 1, 2018, a BAC of 0.10 or more. Under the bill, it would mean a BAC of 0.08 or more or, beginning October 1, 2023, a BAC of 0.10 or more.

Operating a Commercial Motor Vehicle

The Code prohibits a person from operating a commercial motor vehicle if he or she has a BAC of 0.04 or more but less than 0.08 or, beginning October 1, 2018, a BAC of 0.04 or more but less than 0.10. Under the bill, the prohibition would apply to a commercial vehicle driver with a BAC of 0.04 or more but less than 0.08 or, beginning October 1, 2023, a BAC of 0.04 or more but less than 0.10.

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Under the sentencing guidelines, offense variable 3 is physical injury to a victim. The guidelines require 50 points to be scored if death results from the commission of a crime and the offense or attempted offense involves the operation of a vehicle, vessel, off-road vehicle (ORV), snowmobile, aircraft, or locomotive, and one of several factors applies. One of those factors is that the offender had a BAC of 0.08 or more or, beginning October 1, 2018, had a BAC of 0.10 or more. Under the bill, the points would have to be scored if the offender had a BAC of 0.08 or more or, beginning October 1, 2023, had a BAC of 0.10 or more.

Offense variable 18 is operator ability affected by alcohol or drugs. The guidelines require 10 points to be scored if the offender operated a vehicle, vessel, ORV, snowmobile, aircraft, or locomotive while he or she had a BAC of 0.08 or more but less than 0.15 or, beginning October 1, 2018, had a BAC of 0.10 or more but less than 0.15. Under the bill, the points would have to be scored if the offender had a BAC of 0.08 or more or, beginning October 1, 2023, had a BAC of 0.10 or more.

The guidelines also require five points to be scored under offense variable 18 if the offender operated a vehicle, vessel, ORV, snowmobile, aircraft, or locomotive, and he or she was under 21 and had any bodily alcohol content. "Any bodily alcohol content" includes a BAC of 0.02 or more but less than 0.08 or, beginning October 1, 2018, a BAC of 0.02 or more but less than 0.10. Under the bill, the term would include a BAC of 0.02 or more but less than 0.08 or, beginning October 1, 2023, a BAC of 0.02 or more but less than 0.10.

MCL 777.33 & 777.48 (H.B. 4547)
257.625 et al. (H.B. 4548)

Legislative Analyst: Jeff Mann

FISCAL IMPACT

House Bill 4547 (H-2)

The bill would have no fiscal impact on local government and an indeterminate fiscal impact on the State. According to the Michigan Supreme Court's July 2015 opinion in *People v. Lockridge* (in which the Court struck down portions of the sentencing guidelines law), the sentencing guidelines are advisory for all cases. This means that the addition to the guidelines under the bill would not be compulsory for the sentencing judge. As penalties for felony convictions vary, the fiscal impact of any given felony conviction depends on judicial decisions.

House Bill 4548 (H-2)

The bill could have a negative fiscal impact on State and local government. Although the sunset delay would continue current law, this analysis compares the state of affairs with one in which the sunset took effect. In that event, individuals with a BAC of between 0.08 and 0.10 would not automatically be considered driving while intoxicated. Compared to that situation, extending the 0.08 BAC standard would increase the number of arrests and convictions for operating a vehicle while intoxicated.

Increased misdemeanor and felony arrests and convictions could increase resource demands on law enforcement, court systems, community supervision, jails, and correctional facilities. The average cost to State government for felony probation supervision is approximately \$3,024 per probationer per year. For any increase in prison intakes, in the short term, the marginal cost to State government is approximately \$3,764 per prisoner per year. In the long term, if the increased intake of prisoners increased the total prisoner population enough to require the Department of Corrections to open a housing unit or an entire facility, the marginal cost to State government would be approximately \$34,550 per prisoner per year. Any associated increase in fine revenue would increase funding to public libraries.

In addition, if the bill is not enacted, as much as \$57.0 million in annual Federal revenue for transportation would be in jeopardy. Pursuant to the U.S. Code (23 USC 163(e)(2)), the Federal government will withhold 6% of state apportionment funding for the National Highway Performance Program (NHPP) and the Surface Transportation Block Grant Program (STP) for any state that does not enforce a 0.08 BAC requirement. The Michigan Department of Transportation estimates that this figure would be \$57.0 million.

The Federal FAST Act¹ estimates of state apportionment funding, available on the U.S. Department of Transportation's Federal Highway Administration website, project that combined NHPP and STP funding will amount to payments to Michigan of \$926.4 million in 2018, \$944.7 million in 2019, and \$964.7 million in 2020. A 6% loss of NHPP and STP funds for those years would mean a reduction in Federal funding of \$55.6 million, \$56.7 million, and

¹ Fixing America's Surface Transportation Act, Pub. L. No. 114-94

\$57.9 million, respectively. The State Trunkline Fund would bear the brunt of this funding loss, but the loss of funding to local jurisdictions due to this penalty could range from \$13.0 to \$15.0 million for each of those years.

Fiscal Analyst: Ryan Bergan
Michael Siracuse

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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.