

DRUGGED DRIVING REVISIONS

House Bills 5383-5385

Sponsor: Rep. Dan Lauwers

Committee: Judiciary

Complete to 4-16-14

A SUMMARY OF HOUSE BILLS 5383-5385 AS INTRODUCED 3-4-14

Taken together, the bills would:

- Replace references to "preliminary chemical breath analysis" with "preliminary chemical analysis" in the drunk/drugged driving laws.
- Allow a peace officer to require a driver to undergo a preliminary chemical analysis if the officer has reasonable cause to believe a person is operating a vehicle with any measurable amount of a controlled substance or alcohol in the person's blood, breath, urine, or saliva.
- Subject a person to the same testing requirements and consequences for driving with any detectable amount of a controlled substance that are currently in place for driving with an unlawful alcohol content.
- Allow a court to impose conditions for release on bail for a charge of driving with the presence of a controlled substance and require the order for bail conditions to be entered into LEIN.
- Allow expert witness testimony regarding the test results of chemical testing and custody of evidence to be given by two-way video communication.
- Require information regarding a preliminary chemical analysis positive for the presence of a controlled substance to be entered into LEIN, and removed if a subsequent chemical test is negative.

House Bills 5383 and 5384 are tie-barred to House Bill 5385, meaning that neither could take effect unless HB 5385 was also enacted into law.

House Bill 5385

House Bill 5385 amends the Michigan Vehicle Code (MCL 257.625a et al.) to, among other things, replace references to *preliminary chemical breath analysis* (commonly known as breathalyzer tests) with *preliminary chemical analysis*. The bill would define "preliminary chemical analysis" to mean the on-site taking and analysis by immunochemical assay of the breath or saliva of a person for the purpose of detecting the presence of alcohol, a controlled substance, or any other intoxicating substance within the person's body. "Immunochemical assay" would mean a scientific technique using specific binding between antigen and its homologous antibody to identify and quantify a substance in a sample.

In addition, the bill would do the following:

- Apply the same consequences to operating a vehicle with the presence of a controlled substance that are currently in place for having an unlawful alcohol content.
- Apply the same provisions pertaining to submitting to or refusing to take a preliminary chemical test to situations involving the presence of a controlled substance. Consequences include immediate confiscation of an operator's license or permit and issuance of a temporary paper one.
- Add "saliva" to the list of substances analyzed for the presence of alcohol, controlled substances, or other intoxicating substances.
- Define the "presence of a controlled substance" to mean the presence of any amount of a Schedule 1 controlled substance listed in Section 7212 or described in Section 7214(a)(iv) of the Public Health Code. The unlawful substances include cocaine, marihuana, methamphetamines, Ecstasy, Spice, and other designer drugs and hallucinogens.

House Bill 5383

House Bill 5383 amends the Code of Criminal Procedure (MCL 763.1, 765.6b, and 768.22) to make the following changes:

- The bill would specify that nothing in a provision pertaining to the rights of a person accused of a crime to be heard by counsel, mount a defense, and confront witnesses would prohibit the use of video communication equipment as authorized under the act.
- In a prosecution for a violation of the Michigan Vehicle Code drunk/drugged driving statutes (MCL 257.625 and 257.625m), the bill would authorize a court to allow an expert witness to be sworn and testify concerning chemical testing and custody of evidence by video communication equipment. The equipment would have to permit all the individuals appearing or participating to hear and speak to each other in the court, chambers, or other suitable place. A verbatim record of the testimony would have to be taken in the same manner as for other testimony.
- Current law allows a court to place conditions on a person's release on bail, to have the order for the "protective conditions" be entered into LEIN (Law Enforcement Information Network), and to subject the person to arrest if the conditions are violated. The bill would create a similar provision pertaining to release after an arrest on a charge of driving with the presence of a controlled substance.

Specifically, if a defendant had submitted to a preliminary chemical test, and the test showed the presence of a controlled substance, a judge or district court magistrate could release the defendant on bail subject to the following conditions:

- The defendant could not operate a motor vehicle under the influence of alcohol or a controlled substance.
- A violation of the above would subject the defendant to arrest without a warrant, to forfeiture or revocation of bail, and to being held in custody prior to trial.

The defendant would have to be informed, in a writing personally delivered or orally, of the above conditions. A law enforcement agency within the court's jurisdiction would have to be ordered, in writing, to immediately enter an order or amended order into LEIN. If the order or amended order were rescinded, the judge or district court magistrate would have to immediately order the removal of the order or amended order from LEIN upon its expiration.

House Bill 5384

House Bill 5384 would add a new section to the Michigan Vehicle Code (proposed MCL 257.625j). If the results of a preliminary chemical analysis administered under Section 625g appear to show a controlled substance is present in the person's body, the peace officer administering the chemical test would have to enter that information into LEIN within 72 hours, and indicate that a subsequent chemical test is pending. The information would have to be removed by the peace officer if the subsequent chemical test administered under Section 625a(6) reveals the absence of a controlled substance in the person's body. Testing under Section 625a(6) pertains to the analysis of blood, urine, or saliva (as proposed by HB 5385).

FISCAL IMPACT:

A fiscal analysis is in process.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.