



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

BILL ANALYSIS



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

Senate Bill 863 (Substitute S-2 as reported)
House Bill 5385 (Substitute S-2 as reported)
Sponsor: Senator Phil Pavlov (S.B. 863)
Representative Dan Lauwers (H.B. 5385)
Senate Committee: Judiciary
House Committee: Judiciary (H.B. 5385)

CONTENT

House Bill 5385 (S-2) would amend the Michigan Vehicle Code to do the following:

- Replace provisions for a preliminary chemical breath analysis with provisions for a "preliminary roadside analysis", which would determine the presence of alcohol, a controlled substance, any other intoxicating substance, or any combination of those substances, in a driver's body.
- Authorize a peace officer to require a driver to submit to a preliminary roadside analysis if the officer had reasonable cause to believe that the person's ability to drive was affected by his or her consumption of alcohol, a controlled substance, or another intoxicating substance, or a combination of them.

Currently, a peace officer may require a person to submit to a preliminary chemical breath analysis if the officer has reasonable cause to believe that the person was operating a motor vehicle upon a public highway or other place open to the public or generally accessible to motor vehicles, and that the person might have affected his or her ability to operate a vehicle by the consumption of alcoholic liquor, or reasonable cause to believe that a person was operating a commercial motor vehicle while his or her blood, breath, or urine contained any measurable amount of alcohol or while he or she had any detectable presence of alcoholic liquor, or reasonable cause to believe that a person under 21 years old was operating a vehicle upon a public highway or other place open to the public or generally accessible to motor vehicles while he or she had any bodily alcohol content (as defined in the Vehicle Code).

The bill would retain these provisions but refer to a "preliminary roadside analysis" rather than a "preliminary chemical breath test", and would refer to alcoholic liquor, a controlled substance, or other intoxicating substance, or a combination of them.

Also, other provisions that currently apply to a preliminary chemical breath analysis would apply to preliminary roadside analysis. Various provisions that currently apply with respect to chemical tests and analysis of a person's blood, urine, or breath other than a preliminary chemical breath analysis would apply with respect to chemical tests and analysis other than a preliminary roadside analysis.

The bill would define "preliminary roadside analysis" as the on-site taking of a preliminary breath test from the breath of a person or the performance and observation of a field sobriety test for the purpose of detecting the presence of any of the following within the person's body:

- Alcoholic liquor.

- A controlled substance, as defined in Section 7104 of the Public Health Code.
- Any other intoxicating substance, as defined in Section 625 of the Vehicle Code.
- Any combination of the substances listed above.

Senate Bill 863 (S-2) would amend Chapter V (Bail) of the Code of Criminal Procedure to do the following with respect to a defendant who had submitted to a preliminary roadside analysis that detected the presence of alcohol, a controlled substance, and/or other intoxicating substance:

- Authorize the court to release the defendant subject to conditions necessary for the protection of the public.
- Require the court order to be entered into the Law Enforcement Information Network (LEIN).
- Require the defendant to be informed that, as a condition of release, he or she could not operate a motor vehicle under the influence of alcohol, a controlled substance, and/or another intoxicating substance.
- Require the defendant to be informed that he or she would be subject to warrantless arrest and bail revocation if he or she violated that condition.

Also, with respect to a defendant who is released subject to conditions necessary for the protection of another person, the bill would require the judge or magistrate to order the issuing court or (as currently provided) a law enforcement agency to enter the order into LEIN.

In addition, the bill would include in the definition of "electronic monitoring device" an instrument used to monitor an individual's blood alcohol content.

Both bills would take effect 90 days after they were enacted. Senate Bill 863 (S-2) is tie-barred to House Bill 5385.

MCL 765.6b (S.B. 863)
257.320a et al. (H.B. 5385)

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

House Bill 5385 (S-2) would replace references to "preliminary chemical breath analysis" with "preliminary roadside analysis", which would expand the test to detect, in addition to alcohol, Schedule 1-5 controlled substances or any other intoxicating substance. A refusal of the preliminary roadside analysis would carry the same penalty as prescribed for a refusal of the chemical breath analysis: a \$100 maximum civil infraction fine or, for a person driving a commercial vehicle, a misdemeanor penalty of up to \$100 and/or 93 days in jail. There would be a cost to local courts and jail systems if the number of refusals increased and the offenders were sentenced to serve time in jail. Any increased fine revenue would be credited to public libraries.

The bills would require officers to adjust their roadside procedures and would require local courts and State agencies to augment the entry of data into the LEIN system. These requirements would result in negligible costs to local units and State government, which could be assumed within their existing resources.

Date Completed: 9-15-14

Fiscal Analyst: Bruce Baker
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.