

Legislative Analysis



MAINTAIN 0.08 BAC AS "PER SE" LEVEL FOR INTOXICATION OR IMPAIRMENT

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House Bill 4093

Sponsor: Rep. Andrea LaFontaine

House Bill 4131

Sponsor: Rep. Klint Kesto

Committee: Criminal Justice

Complete to 2-12-13

A SUMMARY OF HOUSE BILL 4093 AS INTRODUCED 1-23-13 AND HOUSE BILL 4131 AS INTRODUCED 1-29-13

The bills would amend two different acts to maintain 0.08 BAC as the *per se* level for drunk driving. The bills are reintroductions of House Bills 5665 and 5664, respectively, of last session. They were reported from the House Judiciary Committee.

House Bill 4093 would amend the Michigan Vehicle Code (257.625 et al.). Under the state's *per se* statute (meaning that actual impairment does not have to be demonstrated), a person with a blood alcohol content (BAC) of 0.08 percent is considered to be operating while intoxicated and is guilty of drunk driving. However, on October 1, 2013, the 0.08 BAC *per se* level will revert to 0.10 BAC. The bill would eliminate the sunset provision and maintain 0.08 BAC as the *per se* BAC level for drunk driving.

The bill would also eliminate the sunset provision contained in several other sections of the vehicle code that pertain to drivers of commercial vehicles, drivers less than 21 years of age, and admissibility of chemical testing as evidence, and from the definitions of "any bodily alcohol content" and "unlawful alcohol content."

House Bill 4131 would make complementary changes to the sentencing guidelines within the Code of Criminal Procedure (MCL 777.33 and 777.48). Under Offense Variable 18 (operator ability affected by alcohol or drugs), 10 points are scored if the offender operated a vehicle, vessel, ORV, snowmobile, aircraft, or locomotive with a BAC of at least 0.08 but less than 0.15, with the lower level being raised to 0.10 BAC as of October 1, 2013, (thus lowering the points that could be scored for a BAC of 0.08 to five points). The bill would maintain the lower limit at 0.08 BAC.

For Offense Variable 3 (physical injury to a victim), 50 points are scored if death results from the commission of a crime and the offense or attempted offense involves the operation of a vehicle, vessel, ORV, snowmobile, aircraft, or locomotive and the offender had an alcohol content of 0.08 BAC or higher. The bill would remove the sunset provision that would increase the BAC to 0.10 as of October 1, 2013.

FISCAL IMPACT:

The following information was originally provided on similar bills proposed in the 2011-2012 legislative session:

By eliminating the scheduled sunset of Michigan's .08 blood alcohol content (BAC) standard for driving while intoxicated, the bills would prevent Michigan from returning to the .10 BAC standard which had previously existed. This would have two impacts. First, the state would avoid a potential loss of federal highway funds. Second, the state would forego any savings to state and local correctional systems that might result from reverting to the .10 BAC standard. Each of these issues is discussed in more detail below.

Department of Transportation

The federal government has long provided funds to states for highway programs. Over the last 15 years, federal funds for Michigan highway programs have averaged approximately \$1.0 billion per year – approximately one-third of the state's annual transportation budgets. In order to achieve national highway operational or safety objectives, federal law has established various requirements of the states as a condition of receiving federal funds. Federal requirements include enforcement of vehicle size/weight limitations and control of junk yards and outdoor advertising. Safety-related requirements include mandatory safety belt laws, establishment of national (21-year-old) minimum drinking age, zero tolerance blood alcohol for underage drivers, adoption of a .08 blood alcohol content (BAC) standard for driving while intoxicated, restrictions on open containers of alcohol in vehicles, and adoption of federal commercial driver's license standards.

On July 6, 2012, President Obama signed into law P.L. 112-141, the Moving Ahead for Progress in the 21st Century Act (MAP-21) which reauthorized federal-aid transportation programs through September 2014. Subtitle D of MAP-21 amended several sections of federal law dealing with highway safety; Sec. 1402 of MAP-21 amended the *Open container requirements* of federal law; Sec. 1403 of MAP-21 amended provisions related to *Minimum penalties for repeat offenders for driving while intoxicated or driving under the influence*.

Sec. 1404 of MAP-21 amended the penalty provisions related to federal compliance standards, including penalty provisions related to the .08 BAC requirement. The new provisions direct that beginning with the 2012 fiscal year, the FHWA shall withhold 6% of federal funding for certain apportioned programs from states which had not enacted or were not enforcing laws meeting the federal operating while intoxicated requirements.

Michigan had amended its *driving while intoxicated* and *driving under the influence* laws in 2003 to conform to the federal requirements which obtained at that time. Public Act 61 of 2003 amended Section 625 of the Michigan Vehicle Code to define "operating while intoxicated" to mean having a BAC of .08 or greater. Prior this 2003 amendment

the Michigan Vehicle Code had used a .10 BAC to define operating while intoxicated. Public Act 61 also established standards for BAC for minors operating motor vehicles and for operators of commercial motor vehicles. The 2003 legislation is described in this 2003 House Fiscal Agency memo, <http://www.house.mi.gov/hfa/PDFs/HB4247.pdf>

At the time PA 61 was enacted, the Legislature provided for a sunset of the .08 BAC standard; the .08 BAC standard would sunset, and the .10 BAC would again be the legal standard for operating while intoxicated, effective October 1, 2013.

The Michigan Department of Transportation indicates that Michigan is now out of compliance with federal *operating while intoxicated* requirements. The department indicates that failure to demonstrate compliance will cause the FHWA to withhold 6% of MAP-21 apportioned National Highway Performance Program and Surface Transportation Program funds; the potential withheld amount is estimated to be \$50.0 million per year.

Impact of Correctional Costs

The bills are also likely to have an impact on future state and local correctional costs. If the state were to revert to the .10 BAC standard, it is likely that the number of felony and misdemeanor drunk driver convictions would be reduced to some degree and that some of those convicted would be sentenced under lesser offenses. This would reduce state and local correctional costs by an indeterminate amount as well revenue generated from civil fines.

The average cost of prison incarceration in a state facility is roughly \$34,000 per prisoner per year, a figure that includes various fixed administrative and operational costs. The cost of local incarceration in a county jail and local misdemeanor probation supervision varies by jurisdiction. State costs of parole and felony probation supervision, exclusive of the cost of electronic tether, average about \$2,300 per supervised offender per year. Any decrease in penal fine revenues would reduce funding for local libraries, which are the constitutionally-designated recipients of those revenues.

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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.