

EXPUNGE CERTAIN DUI FROM RECORD

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House Bill 4219 (proposed substitute H-1 and proposed amendment)

Sponsor: Rep. Tenisha Yancey

Analysis available at
<http://www.legislature.mi.gov>

House Bill 4220 (proposed substitute H-1)

Sponsor: Rep. Joseph N. Bellino, Jr.

Committee: Judiciary

Complete to 2-23-21

SUMMARY:

Taken together, the bills would allow a person to apply to have set aside, and allow a judge to set aside, a *first violation operating while intoxicated offense*. Certain violations, such as a drunk or drugged driving offense that caused the death or serious impairment of a bodily function of another person and any second or subsequent convictions for a drunk or drugged driving offense, would not be included in the offenses eligible to be set aside under the bills. A conviction for an operating a vehicle while intoxicated offense involving a blood alcohol content (BAC) of 0.17 grams or more would also be excluded from being eligible for a set-aside.

House Bill 4219 would amend 1965 PA 213, which provides for setting aside certain criminal convictions, to define the term *first violation operating while intoxicated offense*.

First violation operating while intoxicated offense would mean a violation of any of the following committed by an individual who at the time of the violation has no prior convictions for violating section 625 of the Michigan Vehicle Code:

- Section 625(1)(a) or (b), (2), (3), (6), or (8) of the Michigan Vehicle Code (see below).
- An ordinance or law substantially corresponding to a violation listed above as follows:
 - A local ordinance.
 - A law of an Indian tribe.
 - A law of another state.
 - A law of the United States.

The definition of *operating while intoxicated*, which currently, generally speaking, means a violation of the drunk and drugged driving laws (section 625 of the Michigan Vehicle Code) and alcohol-related offenses committed while operating a commercial vehicle (section 625m of the Michigan Vehicle Code), and a local ordinance, law of an Indian tribe, law of another state, or federal law that substantially corresponds to a violation of section 625 or 625m, would be revised to include any of those violations that are not a first violation operating while intoxicated offense.

Section 625(1)(a) and (b) of the Michigan Vehicle Code establishes penalties for operating a motor vehicle while intoxicated, which is defined to mean:

- Under the influence of alcohol, a controlled substance (e.g., prescription drugs), or other intoxicating substance or any combination of these [section 625(1)(a)].
- A BAC of 0.08 grams (beginning October 1, 2021, a BAC of 1.0 grams) [section 625(1)(b)].

The proposed amendment would not include violation of section 625(1)(c), defined in the act as a BAC of 0.17 grams or more and often referred to as “superdrunk” offenses, as an operating while intoxicated offense that could be set aside under the bill. Such offenses would not be eligible to be considered for expungement.

Section 625(2) prohibits an owner or person in charge or control of a vehicle from authorizing or knowingly permitting another person to operate the vehicle if that person is under the influence of alcohol or a controlled substance or other intoxicating substance, or a combination of any of those; if the person has a BAC of 0.08 grams or more; or if the person’s ability to operate the vehicle is visibly impaired due to the consumption of alcohol or a controlled substance or intoxicating substance, or a combination of any of those.

Section 625(3) prohibits a person from operating a vehicle while visibly impaired due to the consumption of alcohol or a controlled substance or other intoxicating substance, or a combination of any of those.

Section 625(6) prohibits a person who is less than 21 years of age, whether licensed or not, from operating a vehicle with any bodily alcohol content, which, for purposes of the prohibition, means an alcohol content of 0.02 grams or more but less than 0.08 grams or any presence of alcohol within the person’s body from consuming alcohol other than alcohol consumed as a part of a generally recognized religious service or ceremony.

Section 625(8) prohibits a person from operating a motor vehicle with any bodily amount of cocaine or a Schedule 1 controlled substance.

MCL 780.621

House Bill 4220 would amend a different section of the same act. Currently, a person cannot petition to have set aside, and a judge cannot set aside, a conviction for operating a motor vehicle while intoxicated.

Under the bill, the prohibition on setting aside a conviction for operating while intoxicated would not apply to a conviction for a *first violation operating while intoxicated offense* if the person applying to have the conviction set aside has not previously applied to have and had a first violation operating while intoxicated offense set aside. (That is, if a person had already applied for and been granted a set-aside of a first violation operating while intoxicated offense, he or she could not apply to have set aside or be granted a set-aside for another first violation operating while intoxicated offense.) In addition, such an offense could only be set aside if a person applied to a court to have it set aside and a judge

approved the application. It would not be eligible to be automatically set aside under the process created by 2020 PA 123 to automatically set aside convictions for eligible offenses without application to or approval by a judge.

MCL 780.621c

The bills would take effect April 11, 2021. Each is tie-barred to the other, which means that neither could take effect unless both were enacted.

BACKGROUND:

House Bills 4219 and 4220 are respectively reintroductions of HBs 5029 and 6453 of the 2019-20 legislative session, and taken together they are similar to that session's SB 1254, which combined the provisions of HBs 5029 and 6453 into one bill. Senate Bill 1254 was passed by the legislature and enrolled, but was pocket vetoed on January 4, 2021.¹

FISCAL IMPACT:

The bills could result in an indeterminate short-term increase in license reinstatement fee revenue resulting from the expungement of certain driving while intoxicated offenses and subsequent license reinstatements following expungement. The short-term revenue increase would presumably be later offset by fewer reinstatement fees being remitted at the time the individual would have paid the fee at the time the current law allows. This would result in no net revenue gain in the long-term.

Individuals convicted of an operating while intoxicated offense under section 625 of the Michigan Vehicle Code are required to have their driver license suspended and must pay a \$125 license reinstatement fee to have their license reinstated following the required suspension time for their offense. Revenue from license reinstatements is distributed to several state departments and allocated as described in Table 1, below.

In addition, House Bills 4219 and 4220 would have an indeterminate fiscal impact on local units of government. The fiscal impact would be related to increased caseloads for courts and the additional resources required to process applications for conviction expungement.

¹ If the governor does not sign a bill within 14 days after getting it and the legislature has adjourned to end the legislative session, the bill does not take effect and is said to have been "pocket vetoed." The term dates from the nineteenth century and is based on the metaphor of putting a bill in one's pocket instead of either signing it into law or returning it unsigned as a regular veto. Unlike a regular veto, a pocket veto does not oblige the governor to provide the legislature with his or her objections to the bill.

Table 1
Distribution of License Reinstatement Revenue

Receiving Department/Entity	Amount	Fund Legal Basis (MCL)	Description
State	\$50	Reinstatement Fees 257.320e	Supports various operations within the Secretary of State.
Transportation	\$35	Economic Development Fund 247.902	Funds highway, road, and street projects that support economic growth.
Judiciary	\$30	Drunk Driving Fund 257.625h	Funds the drunk driving case-flow program which assists trial courts with timely disposition of drunk driving offense cases.
State Police	\$10	Drunk Driving Prevention and Training Fund 257.320e	Supports the purchase and maintenance of breath-alcohol testing equipment and training to law enforcement officers on using the equipment.

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