

Legislative Analysis



ADD OTHER BODILY FLUID AND ORAL FLUID FIELD TESTS TO OWI PROVISIONS

Phone: (517) 373-8080
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House Bill 4701 as introduced
Sponsor: Rep. Gary Howell
Committee: Judiciary
Complete to 5-20-21

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

SUMMARY:

House Bill 4701 would amend several provisions of the Michigan Vehicle Code regarding drunk or drugged driving to define the term “other bodily fluid” and apply provisions pertaining to preliminary breath tests (PBTs) and chemical tests also to oral fluid field tests and other bodily fluid, respectively.

Currently, a driver suspected of drunk driving may be requested to submit to a PBT during a roadside stop and, if arrested on suspicion of drunk or drugged driving (or based on the result of the PBT), he or she is required to take a chemical test to determine the amount of alcohol or presence of a controlled substance, or both, in his or her blood, breath, or urine. A chemical test is an evidentiary test, and the results are admissible in a court proceeding.

The bill would add the term *other bodily fluid* to provisions pertaining to a chemical test and the term *oral fluid field test* to provisions pertaining to a roadside PBT.

Other bodily fluid would mean fluid from the human body capable of revealing the presence of controlled substances or their metabolites, including oral fluid or saliva.

Under the bill, provisions pertaining to criminal penalties and license sanctions currently in place for operating a motor vehicle or a commercial motor vehicle with unlawful amounts of alcohol or for any amount of a controlled substance contained in a person’s blood, breath, or urine would also apply to alcohol or controlled substances in *other bodily fluid*. Similarly, provisions that currently apply to a request by a peace officer to submit to a PBT or for penalties or license sanctions for refusing a PBT would also apply to a request to submit to an *oral fluid field test*.

The bill would take effect 90 days after its enactment.

MCL 257.319b et al.

FISCAL IMPACT:

Adding “other bodily fluid” to provisions pertaining to a chemical test and adding “oral fluid field test” to provisions pertaining to a roadside PBT, as means of revealing the presence of unlawful amounts of alcohol or controlled substances, would most likely result in an increase in the number of individuals found in violation and subsequently convicted. Depending on the number of additional convictions and the specific charges, House Bill 4701 would have an indeterminate fiscal impact on the state and on local units of government. Violations could be

either misdemeanors or felonies, depending on the circumstances. New misdemeanor convictions would increase costs related to county jails and/or local misdemeanor probation supervision. Costs of local incarceration in county jails and local misdemeanor probation supervision, and how those costs are financed, vary by jurisdiction. New felony convictions would result in increased costs related to state prisons and state probation supervision. In fiscal year 2020, the average cost of prison incarceration in a state facility was roughly \$42,200 per prisoner, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about \$4,300 per supervised offender in the same year. Those costs are financed with state general fund/general purpose revenue. The fiscal impact on local court systems would depend on how provisions of the bill affected court caseloads and related administrative costs. Any increase in penal fine revenue would increase funding for public and county law libraries, which are the constitutionally designated recipients of those revenues.

The bill would likely have no fiscal impact on the secretary of state (SOS). The SOS could receive additional reinstatement fee revenue if the inclusion of chemically testing other bodily fluid as defined by the bill results in a additional suspensions of driver licenses. The \$125 fee for most license suspension reinstatements is distributed as shown below in Table 1.

Table 1. Distribution of \$125 License Reinstatement Fee Revenue

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

Legislative Analyst: Susan Stutzky
Fiscal Analysts: Robin Risko
Michael Cnossen

■ 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.