



House
Legislative
Analysis
Section

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This revised analysis replaces the analysis dated 5-29-90.

COMMERCIAL DRIVERS DRUNK WITH .04% BAC

House Bill 4284 (Substitute H-4)
Sponsor: Rep. Floyd Clack

House Bill 4307 (Substitute H-5)
Sponsor: Rep. Michael E. Nye

Revised First Analysis (7-18-90)
House Committee: Transportation
Senate Committee: Criminal Justice & Urban Affairs

THE APPARENT PROBLEM:

The Commercial Motor Vehicle Safety Act was enacted in 1986 to put into federal law more stringent truck safety provisions and, along with federal rules adopted in 1988, requires states to enact similar laws or else forfeit future transportation funding. Michigan complied in 1988 when the Vehicle Code was amended (under Public Act 346) to conform to federal standards for such things as the licensing of commercial drivers, keeping records of these commercial drivers and conveying this information (via computer) to the U.S. Department of Transportation, and various other truck safety issues. Provisions relative to drunk driving by commercial drivers, however, were not included in the act as the federal law dealt in a limited way with this issue; instead, federal rules were adopted late in 1988 which specifically addressed the issue. These rules specify that states have until April 1, 1992 to adopt laws that parrot federal drunk driving standards for commercial truckers, and the Department of State has thus requested legislation to accomplish this goal.

THE CONTENT OF THE BILLS:

The bills would amend various portions of the Vehicle Code to prohibit a person with a blood alcohol content (BAC) of .04 percent up to .07 percent from operating a commercial motor vehicle (bus, school bus, or large truck) on state highways. In general, the bills would provide for tougher enforcement of drunk-driving provisions in the act for a person believed to be operating a commercial motor vehicle in violation of the bill, and stricter penalties for a person convicted of operating a commercial motor vehicle while drunk. The bills are tie-barred to each other, and would become effective January 1, 1991.

House Bill 4284 would amend the Vehicle Code (MCL 257.320a and 257.625m) to prohibit a person, whether licensed or not, with a BAC of .04 percent but not more than .07 percent from operating a commercial motor vehicle in the state. The bill would permit a police officer, without a warrant, to arrest a person if the officer had reasonable cause to believe the person was, at the time of an accident, the driver of a commercial motor vehicle involved in the accident who was driving in violation of the bill or a local ordinance substantially corresponding to the bill.

A person convicted of violating the bill or a similar law would be guilty of a misdemeanor and could be punished by imprisonment for up to 90 days or a fine of \$300, or

both, together with costs of the prosecution. As part of the sentence, the court would order the secretary of state to suspend the person's operator's or chauffeur's license as specified elsewhere in the act. The court could not order the secretary of state to issue a restricted license that would permit the person to drive a commercial motor vehicle.

A person who violated the bill or a similar law within 10 years of a prior conviction (including a conviction in another state) could be sentenced to imprisonment for up to one year or a fine of up to \$1,000, or both. As part of the sentence, the court would have to order the secretary of state to revoke the vehicle group designations on the person's driver's license as provided for in the act.

House Bill 4307 would amend the Vehicle Code (MCL 257.7a et al.) to include in the act tougher enforcement provisions relative to drunk-driving by commercial drivers.

The act currently exempts certain persons from the act's licensing requirements. The bill would add an exemption for a person who was taking a road test with a certified examiner appointed by the Department of State. The bill also specifies that an applicant for a vehicle group designation would have to take knowledge and driving skills tests that complied with minimum standards contained in federal law.

Suspension, Revocation of License. The bill would require the secretary of state to suspend a commercial driver's license (for as little as 60 days or for life, depending on the violation) of a person upon notice from a court or administrative tribunal that the person was responsible for violating certain drunk-driving laws, or that the person had refused the request of a police officer to submit to a chemical test of his or her blood, breath, or urine that could determine the person's BAC or presence of a controlled substance or both while the person was driving a commercial motor vehicle. The bill would prohibit operation of a commercial vehicle with a BAC of .015 percent or more, but specifies that a person who failed to comply with this provision would not be guilty of a civil infraction or criminal violation of the act.

The secretary of state would have to revoke all vehicle group designations on a person's driver's license for at least 10 years and until the person was approved for driver's licensing upon notification that a person had been convicted, or notice that a court or administrative tribunal had found the person responsible for one or more of various

H.B.s 4284 & 4307 (7-18-90)

drunk-driving violations within a 10 year period. The bill would add to the list of violations that would trigger this provision two separate incidents of refusing to submit to a chemical test to determine the alcohol or controlled substance content of the blood. A determination by a court of original jurisdiction or by an authorized administrative tribunal that a person had violated the law would be considered a conviction.

Breath Test, Out-of-Service Order. The bill would permit a police officer to request a preliminary chemical breath test if the officer had reasonable cause to believe a person had been operating a commercial motor vehicle while he or she had any detectable presence of alcohol, or the person's blood contained any measurable amount of alcohol by weight. A person believed to be operating a commercial vehicle in violation of the .015 percent BAC maximum, or a commercial vehicle driver who refused to submit to a preliminary chemical test, would have to be issued an immediate 24 hour "out-of-service" order by a police officer. A preliminary breath test could be used to issue an out-of-service order to the person. A person so ordered could not drive a commercial motor vehicle during the 24-hour order period, and violation of an out-of-service order would be a misdemeanor. Also, an officer who issued such an out-of-service order would have to provide for the safe and expeditious disposition of a hazardous material carried by the vehicle that could damage the vehicle, human health, or the environment.

Other Provisions. Under the bill, a person convicted of violating provisions of House Bill 4284 or certain provisions of House Bill 4307 would only be entitled to an appeal based on the merits of the action; an appeal based on a convicted person's hardship could not be made. The bill would prohibit the secretary of state from issuing a restricted commercial driver's license if a person refused to take a chemical test while operating a commercial motor vehicle. The bill would require a court to order the department to suspend the commercial driver's license of a person convicted of violating certain drunk-driving laws while driving a commercial motor vehicle. Also, the department could not issue a restricted commercial driver's license, nor could the court require the secretary of state to issue a restricted commercial driver's license, to such a person.

FISCAL IMPLICATIONS:

According to the Department of State, the bill would have budgetary implications for the department although these could not be determined. As the bill would establish a lower maximum BAC for commercial drivers, the department said its duties would increase as a result of an increased number of violations that would occur. Along with this, the department said it would expect an increase in implied consent hearings as a result of persons refusing to take breath tests to determine BAC, also resulting in more time and work required by the department to carry out the bill's provisions. The Department of State Police said the bill would not affect its budget although the bill could increase the department's enforcement duties. (5-23-90)

ARGUMENTS:

For:

The bills would make the state's laws regarding drunk driving by commercial drivers conform with the federal mandate contained in the Commercial Motor Vehicle Safety Act of 1986 and subsequent 1988 rules. The standards adopted at the federal level are designed to

reduce the misuse of alcohol by commercial drivers, and the state is required to adopt laws that meet these standards by April 1, 1992 or risk losing federal transportation funds. The .04 maximum BAC level specified in the bill was established after months of review and analysis by the National Academy of Science. As large commercial motor vehicles require a great deal of skill and presence of mind to operate competently, it is reasonable to expect that drivers of these are held to more stringent standards.

Response: A drunk driver behind the wheel of a "small," non-commercial vehicle presents as much of a danger as a drunk commercial driver and should be held to the same standards. While the .04 percent BAC federal mandate for states applies only to commercial drivers, the state should go one step further and apply this standard to all drivers.

POSITIONS:

The Department of State supports the bills. (5-23-90)

The Department of State Police supports the bills. (5-23-90)

The Michigan Trucking Association supports the bills. (5-23-90)

Mothers Against Drunk Driving (MADD) supports the concept of the bills. (5-23-90)

The Department of Transportation has no position on the bills. (5-23-90)