



**House
Legislative
Analysis
Section**

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DRUNK DRIVING: 0.08 BAC

House Bills 4247 and 4248

Sponsor: Rep. William Van Regenmorter

Committee: Criminal Justice

Complete to 3-13-03

A SUMMARY OF HOUSE BILLS 4247 AND 4248 AS INTRODUCED 2-18-03

The bills would amend the vehicle code and Code of Criminal Procedure to enhance the penalties for some drunk driving offenses and to establish the blood alcohol level for operating a vehicle while intoxicated at 0.08 grams. House Bill 4248 is tie-barred to House Bill 4247. The bills would take effect September 30, 2003. Specifically the bills would do the following:

House Bill 4247 would amend the Michigan Vehicle Code (MCL 257.310d et al.). Currently, the code prohibits a person from operating a vehicle when he or she is under the influence of intoxicating liquor, a controlled substance, or a combination of both or the person has a blood alcohol content (BAC) of 0.10. The bill would retain the drunk driving offense of operating under the influence of intoxicating liquor (OUIL) and would enhance the penalties for a violation. The code also prohibits operating a vehicle when, due to the consumption of intoxicating liquor, a controlled substance, or both, a person's ability to operate a vehicle is visibly impaired. The bill would revise this provision to specify that operating while intoxicated (OWI) would also include a person who had a BAC of 0.08 grams or more but less than 0.10 grams. Penalties for an OWI violation would also be enhanced under the bill.

License suspensions. Currently, the driver's license for a person convicted of an OUIL is suspended for 180 days if the person had no prior offenses within seven years, but a restricted license can be issued after the first 30 days of the suspension; the bill would increase the time before a restricted license could be issued to 60 days. The secretary of state must suspend a license for 90 days for an OWI violation if the person had no prior convictions within seven years and can issue a restricted license for all or part of the suspension. Instead, the bill would require a 120-day suspension for an OWI and prohibit a restricted license from being issued for the first 30 days of the suspension. (The bill would retain the current 180-day suspension for an OWI involving consumption of a controlled substance or a combination of controlled substances and alcohol.)

Commercial motor vehicles. Currently, a person is prohibited from driving a commercial vehicle if his or her BAC is 0.04 grams or more but less than 0.07 grams; the bill would increase the upper range to prohibit driving with a BAC of 0.04 or more but less than 0.08 grams.

Minors. Currently, a person less than 21 years of age is prohibited from operating a vehicle if he or she has any bodily alcohol content. The bill would revise the BAC pertaining to minors from 0.02 grams or more but less than 0.07 grams to 0.02 grams or more but less than 0.08 grams. The minimum fine for a second or subsequent violation for a minor driving with any bodily alcohol content with another person 16 years of age or younger present in the vehicle would be increased from \$200 to \$400. The maximum fine amount would remain at \$1,000.

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Chemical tests and BAC analysis. If arrested for felonious driving, negligent homicide, manslaughter, or murder resulting from the operation of a vehicle, a person having a BAC of 0.08 grams (decreased from 0.10 grams) or a person less than 21 years of age with any bodily alcohol content (0.02 or more but less than 0.08 grams – increased from 0.07 grams) would be considered to have given consent to a chemical test of his or her blood, urine, or breath. A similar change would be made to the BAC in a provision relating to chemical testing not limiting the introduction of other admissible evidence bearing upon the question of whether a person had been impaired by, or under the influence of, alcoholic liquor. In addition, in a provision pertaining to a person being ordered by a court to submit to a chemical test, the bill would reduce from 0.10 to 0.08 grams the BAC that constitutes “unlawful alcohol content” for an adult driving a noncommercial vehicle.

Presumptions. Under the bill, a person with a BAC of less than 0.08 grams (increased from 0.07) would be presumed to not be impaired (OWI) or under the influence (OUIL). A person with a BAC level of 0.08 grams (changed from 0.07) or more but less than 0.10 grams would be presumed to be OWI. As is now, a person with a BAC level of 0.10 grams or more would be presumed to be OUIL.

Penalties. Several penalties for drunk driving would be enhanced. Some components of the penalties for driving with a BAC of 0.10 or more or driving under the influence (OUIL) would be increased as follows:

- Community service would be increased from a maximum of 45 days to a maximum of 90 days.
- The range for a fine would be increased from \$100 to \$500 to \$200 to \$1,000.
- For a violation that occurred within seven years of a prior conviction, the range for a fine would increase from \$200 to \$1,000 to \$400 to \$2,000.
- For a third or subsequent conviction within ten years (felony OUIL), the minimum fine would be increased from \$500 to \$800 (the maximum fine amount would remain at \$5,000).

All other components of the penalties for an OUIL would stay the same. Components of the penalties for operating while intoxicated (OWI) or a BAC of more than 0.08 but less than 0.10 would be increased as follows:

- The amount for a fine would be \$100 to \$500 rather than the current fine of \$300 or less.
- For a second conviction within seven years, the fine range would be increased from \$200 to \$1,000 to \$400 to \$2,000.
- For a third or subsequent conviction within ten years (felony OWI), the minimum fine amount would be increased from \$500 to \$800 (the maximum fine amount would remain at \$5,000).

All other components of the penalties for an OWI would remain the same. Additionally, the code prescribes penalties if an adult driver violates the provisions regarding an OUIL, OWI,

causing death when OUIL or OWI, or causing a serious impairment of a body function when OUIL or OWI while another person who is less than 16 years of age is occupying the vehicle. The bill would increase the minimum fine for a first offense from \$200 to \$400 and increase the minimum fine for a second offense within seven years or a third or subsequent offense within ten years from \$500 to \$800. The maximum fines for these offenses would remain the same at \$1,000 for a first offense and \$5,000 for a second or subsequent offense.

Other provisions. The bill would also:

- Replace “intoxicating” liquor with “alcoholic” liquor.
- For both passenger vehicles and commercial vehicles, delete provisions pertaining to failure to yield or obey protocols regarding emergency vehicles from the list of offenses that constitute a “prior conviction”.
- Make it a criminal offense for an owner of a car to allow a person to drive the car who has a BAC of 0.08 (decreased from 0.10) or who is under the influence of or intoxicated by drugs or alcohol, or both.
- Delete the definition of “serious impairment of a body function” contained in Section 625(5). Section 58c of the code also defines the term and includes “loss of an organ” in the definition.
- Extend the deadline from October 1, 2002 to October 1, 2004 for the University of Michigan Transportation Research Institute to report its findings to the legislature regarding the effect and impact of the 1998 legislation that enhanced the penalties for repeat offenders.

House Bill 4248. The bill would amend the Code of Criminal Procedure (MCL 777.12f et al.) to make several changes to the corresponding sentencing guidelines for drunk driving and to revise two offense variables. In one change, the bill would replace the reference to “impaired” contained in the sentencing guidelines that apply to violations of Section 625 (drunk driving) of the Michigan Vehicle Code with the term “intoxicated”.

Currently, under offense variable 3 (physical injury to a victim), 35 points is scored if death results from the commission of a crime involving the operation of a vehicle, vessel, ORV, snowmobile, aircraft, or locomotive while the offender is under the influence or while impaired. The bill would delete the phrase “under the influence or while impaired causing death” and replace it with language specifying that the points would have to be scored if the offender’s bodily alcohol content was 0.08 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine, or while he or she was under the influence of or while visibly impaired by the use of alcoholic or intoxicating liquor or a controlled substance or a combination of both.

Offense variable 18 (operator ability affected by alcohol or drugs) requires that 10 points be scored if the offender operated a vehicle, vessel, ORV, snowmobile, aircraft, or locomotive when his or her BAC was 0.10 grams or more but less than 0.15 grams or while he or she was under the influence of intoxicating liquor or a controlled substance or a combination of both. The bill would reduce the lower range of the BAC to 0.08 grams and also apply this offense

variable to an offender who was visibly impaired by the use of alcoholic or intoxicating liquor, controlled substances, or a combination of both.

Further, with regard to persons less than 21 years of age, the bill would increase the upper range of the BAC in the definition of “any alcohol content” from 0.07 grams to 0.08 grams.

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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.