

Legislative Analysis



HEALTH PROFESSIONALS UNDER THE INFLUENCE: ACCESS TO LEIN DATA & MAXIMUM FINE

Mary Ann Cleary, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 5048

Sponsor: Rep. Charles M. Brunner

Committee: Judiciary

Complete to 10-2-13

A SUMMARY OF HOUSE BILL 5048 AS INTRODUCED 10-2-13

The bill would revise provisions regarding the crime of a health professional engaging in the practice of the health profession while under the influence of a controlled substance or with a BAC of .05 grams or greater.

House Bill 5048 would amend the Michigan Penal Code. Currently, it is misdemeanor for a health professional to engage in the practice of the profession with a bodily alcohol content (BAC) of .05 or more grams or, to engage in the practice of the profession while under the influence of a controlled substance and, due to the illegal or improper use of the controlled substance, his or her ability to safely and skillfully engage in the practice of the health profession is visibly impaired.

A first offense is punishable by imprisonment for not more than 180 days and/or a fine of not more than \$1,000. A second or subsequent offense is punishable by imprisonment for not more than a year and/or a minimum fine of \$1,000. However, the original legislation did not set a maximum fine for a repeat conviction. The bill would establish a maximum fine of \$2,500.

If no one was physically harmed or injured by the health professional's conduct, and it was a first offense, the health professional is currently eligible to have the proceedings deferred and the charges dismissed upon successful completion of certain conditions and terms imposed by the court. The records of these proceedings are nonpublic records maintained by the Department of State Police and accessible only as allowed in statute.

The bill would make the following changes:

- Specify that the MSP records of the arrest, court proceedings, and disposition would remain as a nonpublic record unless the court enters a judgment of guilt.
- Allow the courts of the state, law enforcement personnel, and prosecuting attorneys to access the nonpublic records for the purposes of showing whether the defendant has already once utilized the discharge and dismissal provision, or also in determining whether the defendant in a criminal action is eligible for discharge and dismissal by a drug treatment court under Section 1076 of the

Revised Judicature Act. (Currently, access is provided to a court or police agency for these purposes.)

- Specify that the nonpublic records would be accessible by Michigan courts, law enforcement personnel, the Department of Corrections, and prosecuting attorneys for use only in the performance of their duties.

MCL 750.430

FISCAL IMPACT:

There would be no material fiscal impact on the Department of State Police.

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Mark Wolf

■ 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.