

HOUSE BILL No. 5048

October 2, 2013, Introduced by Rep. Brunner and referred to the Committee on Judiciary.

A bill to amend 1931 PA 328, entitled
"The Michigan penal code,"
by amending section 430 (MCL 750.430), as amended by 2004 PA 223.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 430. (1) A licensed health care professional ~~who does~~
SHALL NOT DO either of the following: ~~is guilty of a misdemeanor.~~

(a) ~~Engages~~ **ENGAGE** in the practice of his or her health
profession with a bodily alcohol content of .05 or more grams per
100 milliliters of blood, per 210 liters of breath, or per 67
milliliters of urine.

(b) ~~Engages~~ **ENGAGE** in the practice of his or her health
profession while he or she is 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

1 the practice of his or her health profession is visibly impaired.

2 (2) A peace officer who has reasonable cause to believe an
3 individual violated subsection (1) may require the individual to
4 submit to a chemical analysis of his or her breath, blood, or
5 urine. Before an individual is required to submit to a chemical
6 analysis under this subsection, the peace officer shall inform the
7 individual of all of the following:

8 (a) The individual may refuse to submit to the chemical
9 analysis, but if he or she refuses, the officer may obtain a court
10 order requiring the individual to submit to a chemical analysis.

11 (b) If the individual submits to the chemical analysis, he or
12 she may obtain a chemical analysis from a person of his or her own
13 choosing.

14 (3) The failure of a peace officer to comply with the
15 requirements of subsection (2) renders the results of a chemical
16 analysis inadmissible as evidence in a criminal prosecution for
17 violating this section, in a civil action arising out of a
18 violation of this section, or in any administrative proceeding
19 arising out of a violation of this section.

20 (4) The collection and testing of breath, blood, or urine
21 specimens under this section shall be conducted in the same manner
22 that breath, blood, or urine specimens are collected and tested for
23 alcohol-related and controlled substance-related driving violations
24 under the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923.

25 (5) This section does not prohibit the individual from being
26 charged with, convicted of, or sentenced for any other violation of
27 law arising out of the same transaction as the violation of this

1 section in lieu of being charged with, convicted of, or sentenced
2 for the violation of this section.

3 (6) This section does not apply to a licensed health care
4 professional who in good faith renders emergency care without
5 compensation at the scene of an emergency unless the acts or
6 omissions by the licensed health care professional amount to gross
7 negligence or willful and wanton misconduct.

8 (7) If an individual is convicted under this section, the
9 court shall order that individual to participate in the health
10 professional recovery program established under section 16167 of
11 the public health code, 1978 PA 368, MCL 333.16167.

12 (8) ~~A violation of~~ **AN INDIVIDUAL WHO VIOLATES** this section is
13 **GUILTY OF A MISDEMEANOR** punishable as follows:

14 (A) **FOR A FIRST OFFENSE, BY IMPRISONMENT FOR NOT MORE THAN 180**
15 **DAYS OR A FINE OF NOT MORE THAN \$1,000.00, OR BOTH.**

16 (B) **FOR A SECOND OR SUBSEQUENT OFFENSE, BY IMPRISONMENT FOR**
17 **NOT MORE THAN 1 YEAR OR A FINE OF NOT LESS THAN \$1,000.00 OR MORE**
18 **THAN \$2,500.00, OR BOTH.**

19 (9) ~~(a)~~ If the individual's conduct did not result in physical
20 harm or injury to the patient and the individual has not been
21 convicted previously for violating this section, the court, without
22 entering a judgment of guilt and with the consent of the accused
23 and of the prosecuting attorney, may defer further proceedings and
24 place the accused on probation upon terms and conditions that shall
25 include, but are not limited to, participation in the health
26 professional recovery program established under section 16167 of
27 the public health code, 1978 PA 368, MCL 333.16167. The terms and

conditions of probation may include participation in a drug treatment court under chapter 10A of the revised judicature act of 1961, 1961 PA 236, MCL 600.1060 to ~~600.1082.~~ **600.1084.** Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided under ~~subdivision (b).~~ **SUBSECTION (8).** Upon fulfillment of the terms and conditions, the court shall discharge the individual and dismiss the proceedings. Discharge and dismissal under this section shall be without adjudication of guilt and are not a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime, including additional penalties imposed for second or subsequent convictions under this subsection. There may only be 1 discharge and dismissal under this section as to an individual. ~~The~~ **UNLESS THE COURT ENTERS A JUDGMENT OF GUILT UNDER THIS SUBSECTION, THE** records and identifications division of the department of state police shall retain a nonpublic record of ~~an~~ **THE** arrest, ~~and discharge or dismissal~~ **COURT PROCEEDINGS, AND DISPOSITION** under this subsection. This record shall only be furnished to ~~either or both~~ **ANY** of the following:

(A) ~~(i) To a court or police agency~~ **THE COURTS OF THIS STATE, LAW ENFORCEMENT PERSONNEL, AND PROSECUTING ATTORNEYS** upon request for the purpose of showing whether the individual accused of violating this section has already once utilized this subdivision.

(B) ~~(ii) To a court, police agency, or prosecutor~~ **THE COURTS OF THIS STATE, LAW ENFORCEMENT PERSONNEL, AND PROSECUTING ATTORNEYS** upon request for the purpose of determining whether the defendant

1 in a criminal action is eligible for discharge and dismissal of
2 proceedings by a drug treatment court under section 1076(4) of the
3 revised judicature act of 1961, 1961 PA 236, MCL 600.1076.

4 ~~—— (b) For a first offense, by imprisonment for not more than 180~~
5 ~~days or a fine of not more than \$1,000.00, or both.~~

6 ~~—— (c) For a second or subsequent offense, by imprisonment for~~
7 ~~not more than 1 year or a fine of not less than \$1,000.00, or both.~~

8 (C) TO THE COURTS OF THIS STATE, LAW ENFORCEMENT PERSONNEL,
9 THE DEPARTMENT OF CORRECTIONS, AND PROSECUTING ATTORNEYS FOR USE
10 ONLY IN THE PERFORMANCE OF THEIR DUTIES.

11 (10) ~~(9)~~ As used in this section, "licensed health care
12 professional" means an individual licensed or registered under
13 article 15 of the public health code, 1978 PA 368, MCL 333.16101 to
14 333.18838.