



**Senate Fiscal Agency**  
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BILL



ANALYSIS

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Senate Bill 80 (as passed by the Senate)  
Sponsor: Senator Wayne Schmidt  
Committee: Judiciary

Date Completed: 12-27-17

### **RATIONALE**

The Michigan Vehicle Code contains several provisions under which samples of a driver's urine or blood may be taken when the driver is arrested for drunk or impaired driving or is taken to a hospital for medical treatment after a traffic accident. These provisions, however, do not cover all situations in which the results of a chemical test could be helpful to show that a driver had been drinking or using drugs. A fatal crash that occurred several years ago exposed what appear to be gaps in the law. According to reports about the incident, after a motorist smashed his car into another vehicle and killed two individuals, he refused to submit to a blood test at the scene, and a search warrant was not issued. Evidently, a urine test subsequently was performed for medical treatment and showed the presence of cocaine and opiates in the driver's system, but the test results could not be admitted into evidence.

Under the law, if a driver's blood is withdrawn for medical treatment, the results may be admitted at trial to show that the driver had alcohol or drugs in his or her system. This provision, however, does not apply if a urine sample is taken. In addition, under the law, a driver is presumed to have given consent to chemical tests of his or her blood, breath, or urine, in order to determine the presence of alcohol or drugs, if the driver is arrested for an offense listed in the Code. Otherwise, consent is not presumed, although a police officer might reasonably believe that a driver caused a fatal accident. It has been suggested that statutory amendments be enacted to address these issues.

### **CONTENT**

**The bill would amend the Michigan Vehicle Code to do the following:**

- **Specify that, if a driver's urine were obtained for medical treatment after a motor vehicle accident, the results of a chemical analysis of the sample would be admissible in any civil or criminal proceeding to show the amount of alcohol or presence of a controlled substance or other intoxicating substance in the urine.**
- **Provide that a person would be considered to have given consent to chemical tests of his or her blood, breath, or urine if a peace officer had reasonable cause to believe that the person was the operator of a vehicle that caused a fatal accident.**
- **Provide that the results of a chemical test in a fatal accident would be admissible in a criminal prosecution if the court determined that reasonable cause existed, independent of the test results, to believe that the person was impaired or under the influence of alcohol, a controlled substance, and/or other intoxicating substance.**
- **Require a sample of blood taken from a deceased driver of a vehicle involved in an accident to be withdrawn in a manner directed by a law enforcement officer, rather than as directed by the medical examiner.**

The bill would take effect 90 days after its enactment.

### Admissibility of Urine Analysis

Under the Code, if the driver of a vehicle involved in an accident is transported to a medical facility and a sample of his or her blood is withdrawn at that time for medical treatment, the results of a chemical analysis of that sample are admissible in any civil or criminal proceeding to show the amount of alcohol or presence of a controlled substance or other intoxicating substance in his or her blood, regardless of whether the person had been offered or had refused a chemical test.

Under the bill, if the driver's blood were withdrawn or his or her urine were obtained for medical treatment, the results of a chemical analysis of either or both of those samples would be admissible in any civil or criminal proceeding to show the amount of alcohol or presence of a controlled substance or other intoxicating substance in the person's blood or urine.

### Implied Consent & Admissibility of Sample

The Code provides that a person who operates a vehicle upon a public highway or other place open to the general public or generally accessible to motor vehicles, is considered to have given consent to chemical tests of his or her blood, breath, or urine for the purpose of determining the amount of alcohol or presence of a controlled substance or other intoxicating substance, or any combination of them, in his or her blood or urine or the amount of alcohol in his or her breath if the person is arrested for any of the following:

- Various impaired or drunk driving violations.
- A moving violation causing the death of another person or serious impairment of a body function to another person.
- Reckless driving causing the death of another person or serious impairment of a body function to another person.
- Manslaughter or murder resulting from the operation of a motor vehicle when the peace officer had reasonable grounds to believe the person was operating the vehicle while impaired or under the influence of alcohol, a controlled substance, or other intoxicating substance, or a combination of those substances.

Under the bill, a person also would be considered to have given consent to chemical tests of his or her blood, breath, or urine if a peace officer had reasonable cause to believe that the person was the operator of a vehicle that caused a fatal accident. As used in this provision, "fatal accident" would mean an accident that involves at least one vehicle and that results in either death or serious bodily injury that gives the peace officer reason to believe that the death of at least one person is imminent.

The results of a chemical test for which a person was considered to have given consent in the case of a fatal accident would be admissible in a criminal prosecution for a crime listed above if the court determined that reasonable cause existed, independent of the test result, to believe that the person was impaired by or under the influence of alcohol, a controlled substance or other intoxicating substance, or a combination of alcohol, a controlled substance, or another intoxicating substance.

### Sample of Decedent's Blood

The Code provides that if, after an accident, the driver of a vehicle involved in the accident is deceased, a sample of the decedent's blood must be withdrawn in a manner directed by the medical examiner to determine the amount of alcohol or the presence of a controlled substance or other intoxicating substance, or any combination of them, in the decedent's blood. Under the bill, the sample would have to be withdrawn in a manner directed by the law enforcement officer rather than by the medical examiner.

MCL 257.625a & 257.625c

## **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

### **Supporting Argument**

The bill would close legal loopholes that can prevent justice from being served. Under the Michigan Vehicle Code, if a person is convicted of driving while under the influence of or impaired by the consumption of a controlled substance or alcohol, and causing the death of another person, the driver is guilty of a felony and may be imprisoned for up to 15 years. In the situation described above, however, the driver who killed two people evidently was convicted of a misdemeanor and served nine months in jail. Although a urine analysis apparently showed that he had been driving under the influence of illegal drugs when he caused the crash, that evidence could not be admitted at trial because of the way the law is written.

The bill would rectify this in several ways. Under the bill, if a driver involved in a traffic accident were taken to a hospital and a sample of his or her blood *or* urine or both were taken, the results of a chemical analysis could be admitted at trial to show that driver had been drinking or had consumed drugs, even if he or she had refused a chemical test. In addition, if a peace officer had reasonable cause to believe that a driver caused a fatal accident, it would be legally presumed that the driver had consented to a test of his or her blood, breath, or urine, and the results could be admitted in a criminal prosecution. Not all drivers who are under the influence act erratically or are combative, and it is not always possible or reasonable for an officer to make a determination on testing amid the chaos of a fatal accident. Expanding the presumption of consent would fill a gap in the law.

In sum, these amendments would help ensure that, in the future, all of the evidence would be gathered when a driver was involved in an accident, particularly a fatality, and the results of chemical testing could be admitted to show that the driver was under the influence of alcohol or drugs. The criminal justice system benefits when all of the facts are known. In addition, scientific evidence can exonerate a defendant as well as aid the prosecution.

Legislative Analyst: Suzanne Lowe

## **FISCAL IMPACT**

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Bruce Baker

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.