

## DRUNK DRIVING: .08 BAC

House Bill 4247 as enrolled  
Public Act 61 of 2003

House Bill 4248 as enrolled  
Public Act 134 of 2003

Sponsor: Rep. William Van Regenmorter  
House Committee: Criminal Justice  
Senate Committee: Judiciary

Second Analysis (8-21-03)

### **THE APPARENT PROBLEM:**

The debate over the blood alcohol level that should constitute drunk driving has raged across the nation for years. Currently, Michigan has a two-tier structure. (1) Under the state's *per se* statute (meaning that actual impairment does not have to be demonstrated), a person with a blood alcohol content (BAC) of 0.10 percent is considered to be operating under the influence (OUIL) and is guilty of drunk driving. (2) Under the state's presumptive level, a person with a BAC of more than 0.07 percent but less than 0.10 percent is considered to be operating a vehicle while impaired (OWI). Violations result in license sanctions and may include fines, imprisonment, community service, participation in a substance abuse program, and vehicle forfeiture (for repeat offenders).

Some recent studies have shown that lowering the *per se* BAC level for drunk driving to 0.08 percent reduces the number of alcohol-related car crashes and fatalities. The research also supports the fact that almost every driver demonstrates some level of impairment at a BAC of 0.08 percent. Many, therefore, believe that the state should lower the *per se* drunk driving BAC level to .08 percent.

Others, however, believe that Michigan's two-tier system (which is currently triggered by a BAC over 0.07 percent), coupled with recent enhancements to penalties for repeat drunk drivers, has been effective in reducing the number of alcohol-related traffic fatalities. For example, alcohol-related traffic fatalities decreased 26.7 percent between 1990 and 1999. In 2001, 34.7 percent of fatal crashes in Michigan involved drinking, and recently released statistics for 2002 show that fatalities involving alcohol decreased to 33 percent. Nationally, alcohol-

related fatalities in 2002 accounted for 41 percent of the fatal crashes, unchanged from the 2001 figure. For these reasons, plus strong opposition from the restaurant industry, past attempts to lower the *per se* BAC limit to 0.08 percent have been unsuccessful.

This debate was rendered moot by 2000 federal legislation that requires all states to establish, by October 1, 2003, a 0.08 percent BAC legal limit for a state's *per se* drunk driving offense. Any state that does not adopt the 0.08 percent BAC by that date will have two percent of certain highway construction funds withheld. The penalty increases by two percent each year thereafter, meaning that for fiscal year 2005, four percent of funds would be withheld; for fiscal year 2006, six percent of funds; and for fiscal year 2007 and following, eight percent of highway construction funds would be withheld. According to a booklet published by the Legislative Service Bureau entitled *Michigan: The Blood Alcohol Concentration Debate*, and a report by the House Fiscal Agency (see *Fiscal Implications*), the penalty would result in a loss of millions in highway construction dollars for fiscal year 2004 and each year thereafter. Though a state would have four years after the funds were withheld to enact and implement a 0.08 percent BAC law and apply to receive those funds back, by fiscal year 2008, all funds withheld would lapse to the federal government and would be irretrievable.

As of July 2003, the National Conference of State Legislatures reports that 42 states and the District of Columbia and Puerto Rico have adopted, as the legal level for drunk driving, a 0.08 percent BAC illegal *per se* law, though Rhode Island's law has been deemed noncompliant with federal funding

requirements. Many of these states have also adopted a two-tier penalty structure by designating a BAC level of 0.10 to 0.20 percent as a high-BAC offense with more stringent penalties. It has been suggested that Michigan amend its drunk driving laws to incorporate the federal requirement of designating a BAC of 0.08 percent as the *per se* law.

### ***THE CONTENT OF THE BILLS:***

In brief, House Bill 4247 would amend the Michigan Vehicle Code to:

- Establish a reduced blood alcohol content (BAC) of 0.08 as the *per se* level for operating while intoxicated (replacing the current BAC level of 0.10 for operating under the influence of intoxicating liquor).
- Continue to permit a person charged with the operating while intoxicated offense to be found guilty instead of the lesser drunk driving offense operating a vehicle while visibly impaired due to the consumption of alcoholic liquor, a controlled substance, or a combination of the two. (Operating while visibly impaired does not require a minimum BAC level but is based on driving behavior.)
- Prohibit a person from driving with any amount of a Schedule 1 drug or cocaine in his or her body, with the penalties to be the same as for operating while intoxicated.
- Provide a 10-year sunset provision whereby all the new references to a *per se* BAC of 0.08 would return to a BAC of 0.10 on October 1, 2013.
- Eliminate from the code the current presumptions that 1) a person 21 years of age or older operating a vehicle with a BAC of 0.07 or less is presumed to have no impairment from alcohol; 2) that a person 21 years of age or older driving with a BAC of over 0.07 but less than 0.10 is operating while impaired; and 3) that a person driving with a BAC of 0.10 or more is presumed to be operating under the influence. (Note: This change would eliminate from the statute any identified BAC level that would automatically constitute operating under the influence or operating while impaired.)

House Bill 4248 would amend the Code of Criminal Procedure to incorporate the corresponding changes into the sentencing guidelines portion of the law and would also revise two offense variables relating to drunk driving.

The bills would take effect September 30, 2003. A more detailed description of the bills follows:

House Bill 4247. Currently, provisions of the Michigan Vehicle Code make it illegal to drive when under the influence of, or impaired by, alcohol, illegal drugs, and certain prescribed medications. The statute also states that a person with a bodily alcohol content (BAC) of 0.10 or higher is presumed to be driving under the influence (OUIL) and a person with a BAC of over 0.07 but less than 0.10 is presumed to be operating while impaired (OWI).

Driving while intoxicated. The bill would make a number of changes to the drunk driving law; most significantly, the bill would lower the *per se* level for operating while intoxicated (a new OWI) from a BAC of 0.10 or more to 0.08 grams or higher. Specifically, the bill would define “operating while intoxicated” as meaning that the person was under the influence of alcohol, a controlled substance, or a combination of both or that the person had a BAC of 0.08 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine. All statutory references to a BAC of 0.10 grams would be changed to apply to a BAC of 0.08 grams.

However, beginning October 1, 2013, the legal limit for operating while intoxicated would increase to a BAC of 0.10 grams or more. All statutory references to a BAC of 0.08 grams will at that time be changed to apply to a BAC of 0.10 grams.

Driving while visibly impaired. The code prohibits a person from driving when due to the consumption of alcohol, a controlled substance, or a combination of both, his or her ability to operate the vehicle is visibly impaired. If a person is charged under the current OUIL provision, the code allows a guilty verdict to be rendered under the visibly impaired provision. The bill would not amend the visibly impaired provision; therefore, a person charged under the new OWI of driving with a BAC of 0.08 grams or more could be found guilty under the operating while visibly impaired provision.

Driving with certain illegal drugs. The bill would add a new subsection [Sec. 625(8)] to prohibit a person from operating a vehicle with any amount of a Schedule 1 drug or cocaine in his or her body. (Schedule 1 drugs are defined as having no medical benefit and include narcotics such as heroin, hallucinogens such as LSD and peyote, marijuana, gamma-hydroxybutyrate (GHB), and ecstasy.) The penalties for this offense would be the same as for an OWI (.08 BAC or higher).

Legal presumptions. Currently, the code specifies that the amount of alcohol in a driver's blood, breath, or urine as shown by a chemical analysis gives rise to several presumptions. A person 21 years or older operating a vehicle with a BAC of 0.07 grams or less is presumed to have no impairment from alcohol. A person 21 years of age or older driving with a BAC of over 0.07 but less than 0.10 grams is presumed to be operating while impaired and driving with a BAC of 0.10 grams or over is presumed to be operating under the influence. These presumptions would be deleted. (Note: This change would eliminate from the statute any identified BAC level that would automatically constitute operating under the influence or operating while impaired.)

Penalties. Generally speaking, the penalties for the various drunk driving related provisions would remain the same. However, the penalties that used to apply to OUIL would now apply to operating while intoxicated (a BAC of 0.08 grams or higher). A violation of the new Sec. 625(8) – any amount of a Schedule 1 drug or cocaine – would be punishable in the same manner as an OWI. In one minor change, the maximum amount of community service that could be imposed for some offenses would be expressed in hours instead of days (360 hours instead of 45 days). This change would apply to driving while intoxicated or with any amount of a Schedule 1 drug or cocaine, driving while visibly impaired, and a minor driving with any bodily alcohol content.

More significantly, the bill would allow a court to order – as a condition of probation for OWI or driving with any amount of a Schedule 1 drug or cocaine – that the offender could not operate a vehicle unless it was equipped with an approved and appropriately installed ignition interlock device. (Currently, such devices are required for repeat offenders whose alcohol-related driver's license denial or revocation is being modified. During the first year of the license restriction, the person must have an ignition interlock device installed on the vehicle that he or she will be driving.) An interlock ignition device prevents a vehicle from starting until the person passes a breath test. From a deep lung sample, the device is able to determine the operator's BAC. If there is any measurable BAC, the car will not start. Further, the device requires additional, random tests while the vehicle is in operation.

Commercial motor vehicles. Operators of commercial vehicles, such as tractor-trailers and buses, must comply with both state and federal regulations regarding the use of alcohol and controlled substances and are held to stricter

standards. Only two minor changes would be made to provisions affecting persons operating commercial vehicles. First, a person would be prohibited, until October 1, 2013, from driving a commercial vehicle if his or her BAC were 0.04 grams or more but less than 0.08 grams (increased from .07 grams to correspond to the change in the *per se* limit for drunk driving). Beginning October 1, 2013, the prohibited range would be 0.04 grams or more but less than 0.10 grams.

Secondly, the bill would delete a provision pertaining to failure to yield or obey protocols regarding emergency vehicles from the list of offenses that constitute a "prior conviction". (An identical provision pertaining to operators of passenger vehicles would not be eliminated.)

Chemical tests and BAC analysis. If arrested for a drunk driving related offense, a person must submit to a chemical analysis of his or her blood, breath, or urine even if a preliminary chemical breath analysis (e.g., a Breathalyzer test) was done. If a person refuses the chemical testing, he or she is subject to automatic license sanctions. A person may request a hearing, but must do so within 14 days of refusing the chemical test. If a person driving a vehicle other than a commercial vehicle fails to request the hearing within the deadline or does not prevail at the hearing, his or her license is suspended or denied for six months. The bill would increase the suspension or denial to one year. For a second or subsequent refusal within seven years, the license would be suspended or denied for two years (increased from one year). These provisions apply to suspension or denial of a driver's license, chauffeur's license, permit to drive, and nonresident operating privilege. Sanctions currently imposed on persons operating a commercial motor vehicle at the time of the offense would remain the same.

Currently, for tests other than preliminary chemical breath analysis, the amount of alcohol or presence of a controlled substance, or both, in a driver's blood or urine or amount of alcohol in the his or her breath at the time alleged as shown by chemical analysis of those substances is admissible into evidence any civil or criminal proceeding. The bill would add that these levels would be presumed to be the same as at the time the person operated the vehicle.

A provision that says chemical testing does not limit 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 would be amended to apply to a BAC level of

0.08 grams or more for adults and a BAC of 0.02 or more but less than 0.08 grams for persons under 21 years of age. Beginning October 1, 2013, the reference to 0.08 grams would be replaced by 0.10 grams.

If arrested for felonious driving, negligent homicide, manslaughter, or murder resulting from the operation of a vehicle, the bill would clarify that a person in violation of the drunk or drugged driving provisions would be considered to have given consent to a chemical test of his or blood, breath, or urine.

Miscellaneous provisions. The bill would also:

- Replace “intoxicating” liquor with “alcoholic” liquor.
- Delete the definition of “serious impairment of a body function” contained in Section 625(5). Section 58c of the code also defines the term but includes “loss of an organ” in the definition.
- Currently, if monitoring of an ignition interlock device indicates that the device had been circumvented, a manufacturer must communicate that fact to the Secretary of State in order to be included on the list of approved manufacturers published by the department. The bill would require that the court also be alerted, if appropriate.
- Allow persons approved by the court to observe the installation of an ignition interlock device.
- Extend the same immunity from liability to a court, its officers, employees, or agents that the code already extends to the state, the Secretary of State, its officers, employees, or agents in regards to claims or actions arising out of any act or omission by a manufacturer, installer, or servicing agent of an ignition interlock device that resulted in damage to persons or property.
- Require the number of arrests made for violations of the new prohibition of operating a vehicle with any amount of a Schedule 1 drug or cocaine to be included in the annual Michigan Drunk Driving Audit prepared by the Department of State Police.
- In determining prior convictions for the purpose of ordering the immobilization of an offender’s vehicle, specify that only one violation of Section 625(6) – a person under 16 years of age driving with any bodily alcohol content – could be used as a prior conviction.

- Change the BAC levels in the definition of “any bodily alcohol content” for drivers less than 21 years of age to 0.02 or more but less than 0.08 grams. Beginning October 1, 2013, the prohibited range would be 0.02 or more but less than 0.10 grams.

- Make several technical changes to update or clarify provisions.

House Bill 4248. The bill would amend the Code of Criminal Procedure (MCL 777.12f et. al.) to incorporate the changes to the drunk driving statutes made by House Bill 4247 into the sentencing guidelines and to revise two offense variables.

In one change, the bills would replace references to operating a vehicle “under the influence” with operating a vehicle “while intoxicated” in provisions that apply to violations of Section 625 (drunk driving) of the Michigan Vehicle Code. In addition, the bill would make technical changes to the descriptions of two offenses [Sec. 257.625(9)(c) and Sec. 257.625(11)(c)].

Offense variable 3. 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 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; if the offender’s body contained any amount of a Schedule 1 controlled substance or cocaine; or 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 (beginning October 1, 2013, the BAC level would change to 0.10 grams or more). The bill would also increase the points scored from 35 points to 50 points.

Offense variable 18. Offense variable 18 (operator ability affected by alcohol or drugs) requires that ten points must 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 alcohol, a controlled substance, or a combination of both. The bill would reduce the lower range of the BAC to 0.08 grams; apply the offense variable to having any bodily

amount of a Schedule 1 controlled substance or cocaine; and increase the points to be scored to 15. Beginning October 1, 2013, the reference to a BAC of 0.08 would be changed back to 0.10 grams.

Further, five points must be scored when a person operates a vehicle, vessel, etc. and his or her BAC is .07 or more but less than .10 or while he or she was visibly impaired by the use of alcohol, a controlled substance, or a combination of both. The bill would retain the current level of points scored and the reference to operating a vehicle while visibly impaired, but would delete the reference to the BAC level.

Lastly, 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. Beginning October 1, 2013, the prohibited range would be 0.02 grams or more but less than 0.10 grams.

### **BACKGROUND INFORMATION:**

Federal requirements. Section 351 of the federal fiscal year 2001-2002 transportation appropriations act requires, in order to avoid sanctions, that a state enact and enforce a 0.08 BAC *per se* law that includes the following provisions:

- Applies to all persons;
- sets a BAC level of not higher than .08 as the legal limit;
- makes operating a vehicle by an individual at or above the legal limit a *per se* offense;
- provides for primary enforcement;
- applies the .08 BAC to the state’s criminal code and, if the state has an administrative license suspension or revocation (ALR) law, to its ALR law; and,
- be deemed to be or be equivalent to the standard driving while intoxicated offense in the state.

Previous legislation. In 1992, 1993, 1995 and 1997, legislation was introduced which would have lowered the BAC level to 0.08. The bills died in the Senate Committee on Judiciary. In 1999 and 2001, legislation was again introduced that would have lowered the *per se* law from 0.10 BAC to 0.08 BAC and prohibited a person under 21 from operating a

vehicle with a BAC between .02 and .05. These bills also died in committee.

Research reports. The Legislative Service Bureau has written two reports available to the public. *The Blood Alcohol Concentration Debate In Michigan* (Research Report Volume 21 No. 8, revised December 2002) gives a history of the state’s drunken driving laws, the two-tiered system, the 0.08 BAC movement, and National Highway Traffic Safety Administration (NHTSA) proposals. Also available is *Repeat Drunken Driver Laws in Michigan* (Research Report Volume 18, No. 4, revised December 2002), which reviews Michigan’s drunken driving laws, current penalties, and the impact of the repeat offenders legislation. Copies of both reports can be requested by phone at 517-373-0472.

The House Fiscal Agency also has an analysis entitled *House Bills 4247 and 4248 – 0.08 Percent BAC and Federal Funding to Michigan Highway Programs* that can be found on the House Fiscal Agency website – [www.house.mi.gov/hfa/PDFs/HB4247.pdf](http://www.house.mi.gov/hfa/PDFs/HB4247.pdf).

The 1998 legislation that increased sanctions for repeat drunk driving offenses in Michigan required the University of Michigan Transportation Research Institute to evaluate the effect and impact of the legislation on drunk and impaired driving. The report, entitled *An Evaluation of Michigan’s Repeat Offender Alcohol Laws* was released in September of 2002. The full report, as well as an executive summary, can be accessed from the Department of State Police website ([www.michigan.gov/msp](http://www.michigan.gov/msp)) under “Publications”. From the Publications page, select “Research Reports”. Among many findings, the executive summary reports that the repeat alcohol offender laws “have been effective in reducing the number of crashes, and crash-related injuries, involving repeat drunk drivers.” However, the report also reveals that “many of the new sanctions are not being well-utilized” and urges future programs and legislation to “focus on ways to increase the use of vehicle immobilization, vehicle forfeiture, and ignition interlocks”.

### **FISCAL IMPLICATIONS:**

According to an analysis by the House Fiscal Agency dated 7-15-03, the bills would have the following fiscal impact:

Transportation funding: Failure to adopt and enforce a 0.08 percent BAC *per se* law would have subjected

the state to federal sanctions regarding aid to state transportation programs. For a detailed analysis of the sanctions that could have been imposed, please see “*House Bills 4247 and 4248 – 0.08 Percent BAC and Federal Funding for Michigan Highway Programs*,” which can be found on the HFA web site at <http://www.house.mi.gov/hfa/PDFs/HB4247.pdf>. The HFA notes in that document that the sanction amount would be about \$9.2 million for fiscal year 2003-04 and would increase each year until it reached \$36.7 million in fiscal year 2006-07. By that year, the cumulative amount withheld would be about \$91.8 million. The agency also pointed out that “the sanctions would be applied to federal apportionments. Apportionments provide for program funding according to a statutory formula. The sanctions would not necessarily represent a dollar for dollar loss of authority to obligate and expend funds”.

**Criminal justice system:** The bills would have an indeterminate impact on state and local justice systems. Because offenses involving a 0.08 percent BAC would be subject to stronger penalties than currently applicable, the bills could increase state and local correctional costs, as well as collections of penal fines, which are constitutionally dedicated to local libraries. Actual costs would depend on how the bills affected charging, pleading, and sentencing practices.

**Secretary of State:** Licensure sanctions contained in HB 4247 could pose additional administrative costs for the Department of State.

## **ARGUMENTS:**

### ***For:***

Evidence continues to mount that adoption of a 0.08 BAC as the legal limit for drunken driving saves lives. According to the National Highway Traffic Safety Administration (NHTSA), two out of three recent studies conducted by the agency clearly demonstrated positive effects of lowering the illegal blood alcohol concentration level from 0.10 to 0.08 percent. In the most comprehensive study, which analyzed data from all 50 states over a period of 16 years, it was “estimated that .08 BAC laws had an 8 percent effect in reducing fatal crashes involving drivers at both high BACs and lower BACs and resulted in 275 fewer fatalities in the 16 states where they were in effect in 1997.” It has been estimated that between 500 and 600 additional lives would be saved if all 50 states adopted 0.08 BAC laws. The second study, which studied the effects of 0.08 BAC

laws and administrative license revocation (ALR) laws in 11 states, found that .08 BAC laws, whether alone or in conjunction with an ALR law, reduced alcohol-related fatalities in 7 of the states. The third study, which was limited to the state of North Carolina, concluded that there “was little clear effect of the lower BAC limit.” (The state was already showing a trend toward declining alcohol-related traffic accidents before the study was conducted.)

### ***For:***

House Bill 4247 will subject persons driving with a BAC of .08 percent and over to the same penalties currently applied to those driving with a BAC of .10 percent and over. When the penalties were increased for repeat offenders beginning in 1999, the crash rate involving drunk drivers decreased. In addition, since the bill would allow ignition interlock devices (devices which require a driver to pass a breath test in order for the vehicle to start) to be installed on cars for drivers convicted of even a first offense, the number of fatalities and serious injuries in crashes involving alcohol should continue to decrease. According to a University of Michigan study on the effects of the repeat drunk driving laws, sanctions that included ignition interlock devices had the greatest effect on reducing drunk driving recidivism. Further, House Bill 4248 will increase the number of points scored for commission of a crime while intoxicated or impaired that results in a person’s death. The sentencing guidelines require points to be scored for various elements of crimes. A score in a certain range makes an offender ineligible for probation. Also, the higher the score, the more jail or prison time an offender must serve before being eligible for parole. Therefore, by increasing the points that can be scored for these offense, the change will increase the minimum sentence some drunk drivers will have to serve before being able to be paroled and may negate probation eligibility for others. Further, a person operating a vehicle with any amount of a Schedule 1 controlled substance or cocaine will now have 10 points added to his or her score.

### ***For:***

There is increased documentation of the dangerous effects that use of illegal drugs have on a driver’s ability to safely operate his or her vehicle. Under House Bill 4247, the use of any amount of cocaine or Schedule 1 drugs, which include opiates, hallucinogens, date rape drugs, ecstasy, MDMA, and marijuana, would incur the same penalties as for people driving while intoxicated. It is difficult to project the number of impaired drivers this provision

will remove from the roads, but it will aide law enforcers to remove drug users from behind the wheel, which will surely increase overall safety for other drivers and pedestrians. Plus, since judges can order participation in substance abuse programs as conditions of probations, perhaps more people can receive help earlier in their addictions. The bill may, therefore, even impact overall crime rates, as the majority of crimes involve offenders who are under the effects of drugs and/or alcohol.

**Against:**

Some experts in data collection and analysis believe that there are flaws in the data and analysis used by the NHTSA, MADD, and other groups. For instance, some people listed as drunk had BACs of zero in the NHTSA's data, according to Responsibility in DUI Laws, Inc. (R.I.D.L.). Also, some data suggests that breathalyzers register a higher BAC for women than for men, meaning that they may show a gender bias. Until such time the data is scrutinized for accuracy, the state's drunk driving laws should remain unchanged.

**For:**

Regardless of the merits of lowering the drunk driving *per se* law to a 0.08 percent BAC, the simple fact is that if Michigan does not adopt such a law and have it in effect by October 1 of this year, the state will lose upwards of \$9 million in federal highway transportation funds for the next fiscal year. Each subsequent year that such a law is not in effect will result in even greater funding losses. Given the ongoing need for funding road repair and other transportation-related projects, and the existing budget shortage which makes funding for the worthiest of projects difficult, the loss of such a significant amount of revenue would not make good fiscal sense.

**Response:**

This is little more than government-sanctioned blackmail. The states, as granted in the U. S. Constitution, should be able to retain the right to decide which laws work best for their citizens. Though Michigan's *per se* level for drunk driving is 0.10 percent BAC, drivers with a BAC of over 0.07 percent face license sanctions, imprisonment, fines, and other penalties. Coupled with tough repeat offender laws enacted in the late 1990s, drunk driving related accidents have decreased over pre-1990 levels. The research report by the University of Michigan on the effects on the repeat offender laws shows that continued, and increased, use of sanctions such as the use of ignition interlock devices, has a

dramatic effect on decreasing the amount of accidents and fatalities caused by repeat offenders.

Also, Michigan is very proactive in reducing deaths and injuries through various programs, such as increasing the law enforcement presence on secondary roads through the Secondary Road Patrol and Traffic Accident Prevention operated by county sheriff's departments and by "You drink & drive, you lose" campaigns initiated by the Drive Michigan Safety Task Force during and before major holidays. Since the recently released 2002 traffic statistics show that traffic fatalities associated with alcohol use continue to decrease, it would appear that the various initiatives are effective. Further, enrolled Senate Bill 509 of the current legislative session would create a new "driver responsibility fee" which would collect from drivers, for two consecutive years, \$1,000 for a drunk driving offense and \$500 from drivers convicted of driving while impaired. Absent the federal government's strong-arm tactics, there simply is no need at this time to revise the state's drunk driving laws. The bills as enacted address this issue in part by sunseting the lower BAC level for intoxication in ten years and reinstating a BAC of .10 percent as the level for driving while intoxicated.

**Against:**

The bills as enrolled contain a sunset provision that will reinstate 0.10 percent BAC as the *per se* level for driving while intoxicated in 10 years. Currently, the law states that a person with a BAC of over .07 percent is presumed to be driving while impaired and driving with a BAC of over .10 percent is presumed to be driving under the influence. However, these presumptions will be eliminated when the new law takes effect. The result is that in 10 years when the higher BAC is reinstated, there no longer will be a presumption in law that driving with a BAC in the range of .08 to .099 percent is driving while impaired. Therefore, it may prove harder to convict drivers in that range unless they visibly demonstrate an impairment. Similarly, the bills still refer to drivers operating "under the influence", yet the presumption that established the *per se* limit for being "under the influence" as a BAC of .10 percent will soon be gone. The vehicle code should be amended to address these concerns.

**For:**

The following arguments in support of 0.08 BAC laws were found on the Mothers Against Drunk Driving (MADD) website:

- The amount of alcohol that a 170-pound man or 137-pound woman would have to consume within an hour in order to exceed a BAC of 0.08 would be more than what is commonly accepted as social drinking. Therefore, a lower BAC law should not “capture” or overly penalize social drinkers, but should instead penalize problem drinkers.
- The fatal crash risk significantly increases at a 0.08 BAC level; the risk of a driver with a 0.08 BAC being killed is 11 times higher than a driver without alcohol in his or her system. The risk is 29 times higher with a 0.10 BAC.
- Virtually everyone shows signs of impairment at 0.08, regardless of how many drinks it took to reach that limit.
- The BAC level in Canada, Great Britain, Austria, and Switzerland is 0.08.

***Against:***

Some are concerned that the bill represents an effort to eventually lower the BAC legal limit even lower, say to .05 percent as some European countries have done, or even to adopt a zero tolerance law for all drivers. Further, some concern has been expressed as to law enforcement officers citing people with low BAC levels (.02-.07 percent) under the visibly impaired provision. Since harsher penalties kick in for a second or subsequent offense, this could unduly penalize social drinkers who do not represent the drinking population responsible for the majority of fatalities and serious injuries – the ones driving with BAC levels over .15 and .20 percent. The bill as passed by the House included a High-BAC offense, with tougher penalties for drivers with a BAC of .15 percent or higher, but it was removed by the Senate. The national trend has been to include these increased penalties for those drivers with higher BAC levels. Michigan would do well to reconsider the issue and further amend the drunk driving laws to increase the penalties for the group responsible for the most crashes, the most fatalities, and the severest injuries.

***Response:***

A person can already be charged with driving while visibly impaired even though his or her BAC level is within the legal limit if erratic driving behavior has been documented by police officers. Most likely, the bill will not “capture” social drinkers who had a glass or two of wine with dinner, as it takes more alcohol than that to raise a person’s blood alcohol level to the prohibited level. As to the bills being the beginning of a slippery slope to a zero tolerance law, that is unlikely. Though people do need to be made aware

that impairment is documented for the general population at 0.08 percent, research just does not support the need to further lower the *per se* level. The bills appropriately mete out penalties for drug use and alcohol use that impairs a driver’s ability to safely operate a motor vehicle.

Analyst: S. Stutzky

■ 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.