




Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536



BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

House Bill 4247 (Substitute S-2 as reported by the Committee of the Whole)
House Bill 4248 (Substitute S-4 as reported by the Committee of the Whole)
Sponsor: Representative William Van Regenmorter
House Committee: Criminal Justice
Senate Committee: Judiciary

CONTENT

House Bill 4247 (S-2) would amend the Michigan Vehicle Code to prohibit a person from operating a vehicle if he or she were "operating while intoxicated", which would mean the person was under the influence of alcoholic liquor and/or a controlled substance, or the person had a bodily alcohol content (BAC) of .08 gram or more per 100 milliliters of blood, 210 liters of breath, or 67 milliliters of urine. This would replace a prohibition against operating a vehicle while under the influence or with a BAC of .10 or more. Beginning October 1, 2013, the prohibition would return to a BAC of .10 or more.

The bill also would: prohibit a person from operating a vehicle if he or she had present in his or her body any amount of a Schedule 1 controlled substance or cocaine (a bodily presence offense); delete presumptions based on the level of a person's BAC; allow a sentencing court to prohibit a person convicted of operating while intoxicated or a bodily presence offense from driving a vehicle without an ignition interlock device; and increase license sanctions for refusing to submit to a chemical test or analysis of blood, breath, or urine.

House Bill 4248 (S-4) would amend sentencing guidelines provisions of the Code of Criminal Procedure to refer to operating a vehicle while "intoxicated", rather than "under the influence"; require 50, instead of 35, points to be scored for offense variable 3 (physical injury to a victim) when death results from a drunk driving offense; and require that 10 points be scored under offense variable 18 (operator ability affected by alcohol or drugs) for a bodily presence offense.

The bills would take effect on September 30, 2003.

MCL 257.303 et al. (H.B. 4247)
777.12f et al. (H.B. 4248)

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

Transportation Funding. Section 351 of the fiscal year (FY) 2000-01 U.S. Department of Transportation (DOT) budget included a provision that will withhold a portion of a state's Federal-aid highway funds for the state's failure to enact a 0.08 BAC *per se* law for driving while intoxicated or an equivalent *per se* offense by September 30, 2003. Beginning in FY 2003-04, a state will lose 2% of its Federal-aid highway apportionments under the National Highway System program, the Surface Transportation Program, and the Interstate Maintenance program if the state fails to enact a 0.08 BAC law. The amount withheld will increase by 2% each year, until it reaches 8% in FY 2006-7. If a state enacts a 0.08 BAC *per se* law before FY 2006-07, it will be eligible for reimbursement of any Federal funding withheld. If a state is not in compliance on October 1, 2007, any funds withheld will begin to lapse and no longer be available for apportionment; e.g., in FY 2007-08, the 2% withheld in FY 2003-04 would lapse. Michigan will be subject to the Section 351 sanctions if it is unable to certify to the U.S. Secretary of Transportation that it has enacted and is enforcing a 0.08 BAC *per se* law by

September 30, 2003. These sanctions will begin to apply with the State's FY 2003-04 Federal apportionments for the Surface Transportation Program, National Highway System program, and Interstate Maintenance program. The table below shows the fiscal impact on Michigan of the sanctions based on FY 2002-03 apportionments for the Surface Transportation Program (\$195,166,132), National Highway System (\$140,896,093), and Interstate Maintenance (\$116,078,531). (It is worth noting that TEA-21, which contains the sanctions, is scheduled to expire at the end of the current fiscal year; therefore, FY 2003-04 apportionment levels may vary considerably under new Federal transportation authorization legislation.)

Federal Apportionment Sanctions Associated with 0.08 BAC Per Se Law

Fiscal Year	Sanction	Sanction Amount	Lapse
2003-04	2%	\$9,042,815	
2004-05	4%	\$18,085,630	
2005-06	6%	\$27,128,445	
2006-07	8%	\$36,171,260	
2007-08	8%	\$36,171,260	2% withheld in FY 2004

The FY 2003-04 Michigan Department of Transportation budget proposed by the Governor and the version of the budget passed by the Senate (Senate Bill 265 (S-1)) do not recognize these sanctions. Should the sanctions occur, appropriate changes will have to be made to the Federal funding included in the budget. To the extent that the bills would satisfy the Federal requirements of the FY 2000-01 U.S. DOT budget, Michigan would not be subject to the Federal highway sanctions that are scheduled to take effect in FY 2003-04.

The bills would result in increased administrative costs to the Department of State associated with the proposed changes to license penalties for various offenses.

Corrections. The bills would have an indeterminate fiscal impact on State and local governments. According to the 2000 Department of Corrections Statistical Report, 3,900 offenders were convicted of violating any section of MCL 257.625, which contains the drunk driving prohibitions. Of those offenders, 70% received probation, 6% received a jail sentence, 23% received a prison sentence, and 1% received some other type of sentence. There are no data to indicate how many more offenders would be convicted if the BAC were decreased from 0.10 to 0.08 for operating while intoxicated, or how many would be convicted of the new bodily presence offense. There also is no way to know how removing the presumption of impairment for an offender with a BAC of at least 0.07 but less than 0.10 would change the number of offenders convicted of operating while visibly impaired. Because the offenses are all 93-day misdemeanors, the amendments should not change the average length of sentence received, and therefore would not have a significant fiscal impact on State and local incarceration costs.

The bills also could affect State and local incarceration costs by increasing the points for offense variable 3, thereby potentially increasing the lengths of sentences offenders would receive.

Date Completed: 7-2-03

Fiscal Analyst: Craig Thiel
Bethany Wicksall

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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.