




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 H-3 as passed by the House)
House Bill 4248 (Substitute H-3 as passed by the House)
Sponsor: Representative William Van Regenmorter
House Committee: Criminal Justice
Senate Committee: Judiciary

Date Completed: 6-17-03

CONTENT

House Bill 4247 (H-3) 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 but less than .15 gram 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.) The bill also would do all of the following:

- Prohibit a person from operating a vehicle if he or she had a BAC of .15 or more (a high BAC offense) or had present in his or her body any amount of a Schedule 1 controlled substance or cocaine (a bodily presence offense), and prescribe criminal penalties and license sanctions for a violation of those prohibitions.
- Retain the offense of operating a vehicle while visibly impaired but delete the related presumption based on a person's BAC, as well as other presumptions based on the level of a person's BAC.
- Revise criminal penalties and license sanctions for various drunk driving offenses.
- Allow a sentencing court to prohibit a person convicted of operating while intoxicated from driving a vehicle without an ignition interlock device, and require such an order for a person convicted of a high BAC offense or a bodily presence offense.
- Increase license sanctions for refusing

to submit to a chemical test or analysis of blood, breath, or urine.

- Revise provisions relating to the certification and installation of ignition interlock devices.
- Require the Department of State Police to include in its Michigan Annual Drunk Driving Audit the number of arrests made for a high BAC or bodily presence offense.

House Bill 4248 (H-3) would amend sentencing guidelines provisions of the Code of Criminal Procedure to do all of the following:

- Refer to operating a vehicle while "intoxicated", rather than while "under the influence", in the provisions for drunk driving felonies.
- Include the proposed felony of a third or subsequent violation of a high BAC offense or a bodily presence offense.
- Revise the scoring requirements for offense variable 3 (physical injury to a victim), when death results from a drunk driving offense, and for offense variable 18 (operator ability affected by alcohol or drugs).

House Bill 4248 (H-3) is tie-barred to House Bill 4247.

The bills would take effect on September 30, 2003.

House Bill 4247 (H-3)

Operating While Intoxicated

The Vehicle Code prohibits a person, whether licensed or not, from operating a vehicle on a

highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for parking, if either of the following applies:

- The person is under the influence of "intoxicating liquor", a controlled substance, or a combination of intoxicating liquor and a controlled substance (OUIL).
- The person has a BAC of .10 gram or more per 100 milliliters of blood, 210 liters of breath, or 67 milliliters of urine.

The bill instead would prohibit a person from operating a vehicle in those locations if he or she were "operating while intoxicated". A person would be considered to be operating while intoxicated if either of the following applied:

- The person were under the influence of "alcoholic liquor", a controlled substance, or a combination of alcoholic liquor and a controlled substance.
- The person had a BAC of .08 or more but less than .15.

The bill would refer to "alcoholic liquor" rather than "intoxicating liquor" throughout the Vehicle Code's drunk driving provisions. ("Alcoholic liquor" would mean that term as defined in the Michigan Liquor Control Code, i.e., any spirituous, vinous, malt, or fermented liquor, liquids, and compounds, whether or not medicated, proprietary, patented, and by whatever name called, containing 1/2 of 1% or more of alcohol by volume, that are fit for use for beverage purposes. "Intoxicating liquor" is not presently defined.)

The bill also would refer to the .08 BAC level in other drunk driving provisions. The Vehicle Code prohibits the owner or person in charge of control of a vehicle from authorizing or knowingly permitting the vehicle to be driven by a person who is under the influence of liquor and/or a controlled substance or who has a BAC of .10 or more. The bill would change that to a BAC of .08 or more.

High BAC/Bodily Presence Offenses

The bill would prohibit a person, whether licensed or not, from operating a vehicle on a highway or other place open to the general public or generally accessible to motor vehicles, including an area designated for parking, if either of the following applied:

- The person had a BAC of .15 gram or more per 100 milliliters of blood, 210 liters of breath, or 67 milliliters of urine.
- The person had in his or her body any amount of a Schedule 1 controlled substance or cocaine.

(Under the Public Health Code, Schedule 1 controlled substances have a high potential for abuse and have no accepted medical use in treatment in the United States or lack accepted safety for use in treatment under medical supervision. Schedule 1 controlled substances include certain opiates, opium derivatives, hallucinogens, marijuana, GHB, and ecstasy.)

The bill also would include the high BAC and bodily presence violations in provisions that prohibit all of the following:

- Causing the death of another person by operating a vehicle while under the influence or impaired.
- Causing serious impairment of a body function of another person by operating under the influence or while impaired.
- Operating a vehicle while under the influence or impaired while another person under 16 is in the vehicle.

Operating While Impaired & Legal Presumptions

The Vehicle Code prohibits a person from operating a vehicle when, due to the consumption of liquor and/or a controlled substance, his or her ability to operate the vehicle is visibly impaired. The bill would retain this prohibition. As the Code currently allows for a charge of operating under the influence or with a BAC of .10 or more, a person charged with operating while intoxicated could be found guilty of operating while impaired.

The bill would delete a provision under which the amount of alcohol in a driver's blood, breath, or urine as shown by chemical analysis gives rise to the following presumptions:

- If the person's BAC was .07 or less, it is presumed that his or her ability to operate a motor vehicle was not impaired due to the consumption of liquor and that he or she was not under the influence of liquor.
- If the person's BAC was more than .07 but less than .10, it is presumed that his or her

ability to operate a vehicle was impaired due to the consumption of liquor.

- If the person's BAC was .10 or more, it is presumed that he or she was under the influence of liquor.

The bill also would add a presumption regarding the chemical analysis of a person's blood, breath, or urine. The Code provides that the amount of alcohol and/or presence of a controlled substance in a person's blood or urine or the amount of alcohol in a person's breath at the time alleged as shown by chemical analysis of his or her blood, breath, or urine is admissible into evidence in any civil or criminal proceeding. Under the bill, the amount of alcohol or presence of a controlled substance also would be presumed to be the same as at the time the person operated the vehicle.

Criminal Penalties

Operating While Intoxicated. The criminal penalties for operating while intoxicated would be the same as the current penalties for OUIL or operating with a BAC of .10 or more, except that the bill would increase the fine amounts and convert some of the community service requirements from days to hours.

Currently, a violation is a misdemeanor punishable by up to 45 days of community service; up to 93 days' imprisonment; and/or a fine of not less than \$100 or more than \$500. Under the bill, the fine would be not less than \$500 or more than \$1,000. The bill also refers to 360 hours, rather than 45 days, of community service.

A violation that occurs within seven years of a prior conviction is a misdemeanor punishable by a fine of not less than \$200 or more than \$1,000 and either: 1) imprisonment for not less than five days or more than one year, with at least 48 hours served consecutively; or 2) community service for not less than 30 or more than 90 days. Under the bill, the fine would be not less than \$500 or more than \$1,500.

A violation that occurs within 10 years of two or more prior convictions is a felony punishable by a fine of not less than \$500 or more than \$5,000 and either: 1) imprisonment under the jurisdiction of the Department of Corrections (DOC) for not less than one year or more than five years; or 2) probation, with imprisonment in the county jail

for not less than 30 days or more than one year, with at least 48 hours served consecutively, and community service for not less than 60 or more than 180 days. Under the bill, the minimum fine would be \$1,000 and the maximum would remain \$5,000.

In addition, the bill specifies that the court could order, as a condition of probation, that a person convicted of operating while intoxicated not operate a motor vehicle unless it was equipped with an ignition interlock device approved, certified, and installed as required under the Vehicle Code.

Driving While Impaired. The criminal penalties for operating a vehicle while visibly impaired would be the same as the current penalties, except that the bill would increase the fine amounts and convert some of the community service requirements from days to hours.

A violation is a misdemeanor punishable by up to 45 days of community service; up to 93 days' imprisonment; and/or a maximum fine of \$300. Under the bill, the maximum fine would be \$500. The bill also refers to 360 hours, rather than 45 days, of community service.

A violation within seven years of a prior conviction is a misdemeanor punishable by a fine of not less than \$200 or more than \$1,000 and either: 1) imprisonment for not less than five days or more than one year, with at least 48 hours served consecutively; or 2) community service for not less than 30 or more than 90 days. Under the bill, the minimum fine would be \$500 and the maximum would remain \$1,000.

A violation within 10 years of two or more prior convictions is a felony punishable by a fine of not less than \$500 or more than \$5,000 and either: 1) imprisonment under the DOC's jurisdiction for not less than one year or more than five years; or 2) probation, with imprisonment in the county jail for not less than 30 days or more than one year, with at least 48 hours served consecutively, and community service for not less than 60 or more than 180 days. Under the bill, the minimum fine would be \$1,000 and the maximum would remain \$5,000.

Drunk Driving with a Child Present. A violation of driving while under the influence or with a BAC of .10 or while impaired with a passenger under 16 is a misdemeanor

punishable by a fine of not less than \$200 or more than \$1,000 and either: 1) imprisonment for not less than five days or more than one year, with at least 48 hours served consecutively; or 2) community service for not less than 30 or more than 90 days. Under the bill, the minimum fine would be \$500 and the maximum would remain \$1,000.

A violation within seven years of a prior conviction or within 10 years of two or more prior convictions is a felony punishable by a fine of not less than \$500 or more than \$5,000 and either: 1) imprisonment under the DOC's jurisdiction for not less than one year or more than five years; or 2) probation, with imprisonment in the county jail for not less than 30 days or more than one year, with at least 48 hours served consecutively, and community service for not less than 60 or more than 180 days. Under the bill, the minimum fine would be \$1,000 and the maximum would remain \$5,000.

The Code prohibits a person under 21 years of age from operating a vehicle if he or she has "any bodily alcohol content" (a zero-tolerance violation). A zero-tolerance violation with a passenger under 16 is a misdemeanor punishable by up to 60 days of community service; a maximum fine of \$500; and/or up to 93 days' imprisonment. The bill would retain those penalties.

If the zero-tolerance violation with a passenger under 16 occurs within seven years of a prior conviction or within 10 years of two or more prior convictions, the offense is punishable by a fine of not less than \$200 or more than \$1,000 and either: 1) imprisonment for not less than five days or more than one year, with at least 48 hours served consecutively; or 2) community service for not less than 30 or more than 90 days. Under the bill, the minimum fine would be \$500 and the maximum would remain \$1,000.

High BAC/Bodily Presence Offenses. Under the bill, a violation of operating a vehicle with a BAC of .15 or more or a bodily presence of a Schedule 1 controlled substance or cocaine would be a misdemeanor punishable by community service for not less than 80 or more than 480 hours, for a high BAC violation, or up to 480 hours for a bodily presence violation; up to 93 days' imprisonment; and/or a fine of \$1,000.

A violation that occurred within seven years of a prior conviction would be a misdemeanor punishable by a fine of not less than \$1,000 or more than \$1,500 and either 1) imprisonment for not less than five days or more than one year, with at least 48 hours served consecutively; or 2) community service for not less than 30 or more than 90 days.

A violation within 10 years of two or more prior convictions would be a felony punishable by a fine of not less than \$1,000 or more than \$5,000 and either 1) imprisonment under the DOC's jurisdiction for not less than one year or more than five years; or 2) probation, with imprisonment in the county jail for not less than 30 days or more than one year, with at least 48 hours served consecutively, and community service for not less than 60 or more than 180 days.

A term of imprisonment for a second violation within seven years or a third or subsequent violation within 10 years could not be suspended.

In the judgment of sentence for a high BAC or bodily presence violation, the court could order the vehicle forfeited. If the vehicle were not ordered forfeited, the court would have to order it immobilized.

In addition, as a condition of probation, the court would have to order that a person convicted of a high BAC or bodily presence violation not operate a motor vehicle unless it was equipped with an ignition interlock device approved, certified, and installed as required under the Vehicle Code, for the full period that the person's license was suspended.

License & Other Sanctions

Suspension & Revocation. The Code requires the Secretary of State to suspend a person's driver's license for drunk driving violations. If the person has no prior convictions within seven years, the suspension must be for 180 days for OUIL or operating with a BAC of .10 or more. A restricted license may be issued during that suspension, except during the first 30 days. Under the bill, that provision would apply to a violation of operating while intoxicated.

Under the bill, if a person had no prior convictions within seven years, the Secretary of State would have to suspend the person's driver's license for one year for a high BAC or

bodily presence violation. A restricted license could be issued during that suspension, except during the first 30 days.

The Code requires the Secretary of State to revoke a person's driver's license if he or she has any combination of two convictions within seven years, or three convictions within 10 years, for any of the following:

- OUIL or operating with a BAC of .10 or more.
- Operating while visibly impaired.
- A drunk driving offense causing death or serious impairment.
- A drunk driving offense with a passenger under 16.
- Operating a commercial vehicle with a BAC of .04 or more.

Under the bill, this revocation requirement would apply to the same combinations of convictions of any drunk driving violation, except authorizing or knowingly permitting a person to operate a vehicle when he or she was under the influence or impaired. (This would include a zero-tolerance offense and the proposed high BAC and bodily presence offenses.)

Points. Within 10 days after receiving a properly prepared abstract, the Secretary of State must record the date of conviction, civil infraction determination, or probate court disposition and the number of points for each based on a formula specified in the Code. Under that formula, the following violations result in six points on the offender's driving record:

- OUIL or operating with a BAC of .10 or more.
- Causing a death or serious impairment due to OUIL or operating while impaired.
- OUIL or operating a vehicle while impaired with a passenger under 16.

Under the bill, that provision would apply to a violation for operating while intoxicated, rather than under the influence or with a BAC of .10 or more, and to a high BAC or bodily presence violation.

Refusing A Chemical Test. Under the Code, a person who operates a vehicle in Michigan 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 and/or presence of a controlled

substance in his or her blood or urine or the amount of alcohol in his or her breath if the person is arrested for the various drunk driving violations or certain other traffic violations. If a person refuses the request of a peace officer to submit to a chemical test, a test may not be given without a court order, but the officer may seek to obtain such an order. The officer immediately must forward a written report to the Secretary of State. The officer also must notify the person who refuses the test that he or she may request an administrative hearing within 14 days. The notice must state that failure to request a hearing will result in the suspension of the person's license.

If a person who refuses to submit to a chemical test does not request a hearing within 14 days, the Secretary of State must impose license sanctions. If the person was operating a vehicle other than a commercial vehicle, the Secretary of State must suspend or deny the person's driver's license or permit to drive, or nonresident operating privilege, for six months. For a second or subsequent refusal within seven years, the suspension must be for one year. The same suspension periods apply to a person who requested a hearing, but did not prevail. The bill would increase those suspension periods to one year and two years, respectively.

If the person is a resident without a license or permit to drive, the Secretary of State may not issue the person a license or permit for six months or, for a second refusal within seven years, for one year. The bill would increase those license denial periods to one year and two years, respectively.

Vehicle Immobilization. The Code provides for vehicle immobilization for a conviction of OUIL or operating with a BAC of .10 or more, while impaired, or while under the influence or impaired with a passenger under 16. If there are no prior convictions, the court may order vehicle immobilization for up to 180 days; for a conviction within seven years of a prior conviction, the court must order immobilization for not less than 90 or more than 180 days; for a conviction within 10 years of two or more prior convictions, the court must order immobilization for not less than one year or more than three years.

Under the bill, those vehicle immobilization sanctions would apply to operating while intoxicated, rather than operating under the

influence or with a BAC of .10 or more, and to a high BAC or bodily presence offense.

House Bill 4248 (H-3)

Ignition Interlock Devices

The Vehicle Code requires the Department of State to approve an ignition interlock device certified by a Department-approved laboratory as complying with the National Highway Traffic Safety Administration’s model specifications. The Department must publish a list of all manufacturers of approved certified devices. The Department may not include a manufacturer on that list unless it complies with certain requirements. Among other things, a manufacturer must agree to monitor periodically the installed ignition interlock devices and, if monitoring indicates that the device has been circumvented, to report that fact to the Secretary of State. The bill would allow reporting to the Secretary of State or the court, as appropriate.

The Code provides that the State and the Department, its officers, employees, or agents are not liable in any claim or action that may arise out of any act or omission by a manufacturer, installer, or servicing agent of an ignition interlock device that results in damage to people or property. The bill would include a court and its officers, employees, or agents in that provision.

The Code requires an ignition interlock device to be serviced according to the manufacturer’s standards. Only authorized employees of the manufacturer or the Department may observe the installation of a device. Under the bill, other people approved by the court also could observe the installation.

High BAC/Bodily Presence Offense

The bill would include in the sentencing guidelines a third or subsequent high BAC or bodily presence violation within 10 years. The offense would be a Class E felony against the public safety, with a statutory maximum sentence of five years’ imprisonment, as proposed by House Bill 4247 (H-3).

Offense Variable 3

The Code requires 35 points to be scored for offense variable 3 (physical injury to a victim) if a crime results in death and the offense involves a person operating a vehicle, vessel, off-road vehicle (ORV), snowmobile, aircraft, or locomotive while under the influence or while impaired. The bill specifies instead that 50 points would have to be scored if death resulted from the commission of a crime and the offense involved a person operating a vehicle, vessel, ORV, snowmobile, aircraft, or locomotive while his or her BAC was .08 or more or he or she was under the influence of or visibly impaired by the use of alcoholic or intoxicating liquor and/or a controlled substance.

Offense Variable 18

The bill would revise the scoring requirements for offense variable 18 (operator ability affected by alcohol or drugs), if the offender’s ability to operate a vehicle, vessel, ORV, snowmobile, aircraft, or locomotive were affected by alcohol or drugs, as shown in Table 1.

Table 1

Current		Proposed	
BAC/Drugs	Points	BAC/Drugs	Points
.20 or higher	20	.15 or more or any Schedule 1 controlled substance or cocaine	20
.15 or more but less than .20	15		
.10 or more but less than .15 or under the influence of intoxicating liquor and/or a controlled substance	10	.08 or more but less than .15 or under the influence of alcoholic or intoxicating liquor and/or a controlled substance	15
.07 or more but less than .10 or while visibly impaired by intoxicating liquor and/or a controlled substance, or a zero tolerance offense	5	Visibly impaired by alcoholic or intoxicating liquor and/or a controlled substance, or a zero tolerance offense	5

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. Under Section 351, 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. Section 351 also provides that 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. Section 351 further provides that 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. For example, in FY 2007-08, the 2% withheld in FY 2003-04 would lapse.

Michigan will be subject to the Section 351 sanctions of the FY 2000-01 U.S. DOT budget 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. Table 2 below shows the fiscal impact on Michigan of the Federal 0.08 BAC sanctions based on FY 2002-03 apportionments for 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.)

Table 2
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 and sanctions 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, there were 3,900 offenders 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 offense of operating with a BAC of 0.15 or higher or with any bodily presence of a Schedule 1 controlled substance or cocaine. 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 could increase State and local incarceration costs by increasing the offense variable points for offense variables 3 and 18, thereby potentially increasing the lengths of sentences offenders would receive.

Public libraries would benefit from the additional revenue raised from increased penal fines.

Fiscal Analyst: Bethany Wicksall
Craig Thiel

S0304\4247sa

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.