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Senate Bill 400 (as enacted)  
Senate Bills 616 and 617 (as enacted)  
House Bills 4219 and 4220 (as enacted)  
House Bills 4308 and 4309 (as enacted)  
Sponsor: Representative Tenisha Yancey (H.B. 4219)  
Representative Joseph N. Bellino, Jr. (H.B. 4220)  
Representative Abdullah Hammoud (H.B. 4308)  
Representative Graham Filler (H.B. 4309)  
Senator Ed McBroom (S.B. 400)  
Senator Roger Victory (S.B. 616 & 617)  
House Committee: Judiciary  
Senate Committee: Judiciary and Public Safety

**PUBLIC ACT 82 of 2021**  
**PUBLIC ACTS 84 & 85 of 2021**  
**PUBLIC ACTS 78 & 79 of 2021**  
**PUBLIC ACTS 80 & 81 of 2021**

Date Completed: 7-18-22

### **CONTENT**

**House Bill 4220** amended Section 1c of Public Act (PA) 213 of 1965, which provides for setting aside convictions in certain criminal cases, to allow for the setting aside of a conviction for a first violation operating while intoxicated (OWI) under certain circumstances.

**House Bill 4219** amended Section 1 of PA 213 to prescribe the definition of "first violation operating while intoxicated offense" and to modify the definition of "operating while intoxicated".

**House Bill 4308** amended the Michigan Vehicle Code to delete the sunset of October 1, 2021, on which the bodily alcohol content (BAC) that constitutes OWI would have increased from 0.08 to 0.10.

**House Bill 4309** amended the sentencing guidelines within the Code of Criminal Procedure to reflect the elimination of the sunset provision raising the BAC that constitutes OWI.

**Senate Bill 400** amended PA 213 to prescribe the time period in which an application to set aside a conviction for a first violation OWI offense must be filed.

**Senate Bill 616** amended the sentencing guidelines within the Code of Criminal Procedure to make various language and grammatical changes.

**Senate Bill 617** amended the Michigan Vehicle Code to make various language and grammatical changes.

Senate Bills 616 and 617 took effect on September 24, 2021. House Bills 4308 and 4309 took effect on November 21, 2021. House Bills 4219 and 4220 took effect on February 19, 2022. Senate Bill 400 took effect on March 9, 2022.

Senate Bill 400 and House Bills 4219, 4220, 4308, and 4309 are described in greater detail below.

### **Senate Bill 400**

Section 1 of PA 213 allows a person who is convicted of one or more criminal offenses to file an application with the convicting court for the entry of an order setting aside one or more certain criminal convictions.

Under the bill, an application under Section 1 to set aside one first violation OWI offense may be filed only five or more years after whichever of the following events occurs last:

- Imposition of the sentence for the conviction or convictions that the applicant seeks to set aside.
- Completion of probation imposed for the conviction or convictions that the applicant seeks to set aside.
- Discharge from parole imposed for the conviction that the applicant seeks to set aside, if applicable.
- Completion of any term of imprisonment imposed for the conviction or convictions that the applicant seeks to set aside.

### **House Bill 4308**

#### Certification

The bill added Section 625(28) to the Code. Under Section 625(28), within 30 days after the State no longer receives annual Federal highway construction funding conditioned on compliance with a national blood alcohol limit, the State Treasurer must certify that fact. The State Treasurer must publish the certification on the Department of Treasury's website.

#### Operating While Intoxicated

Section 625(1) of the Vehicle Code prohibits a person from operating a vehicle upon a highway or other place open to the general public or generally accessible to motor vehicles, if he or she is operating while intoxicated. "Operating while intoxicated" means the person meets any of the following:

- Is under the influence of alcohol, a controlled substance, or other intoxicating substance or a combination of those.
- Has a BAC of 0.08 or more.
- Has a BAC of 0.17 or more.

Previously, beginning October 1, 2021, the 0.08 BAC standard described above would have increased to 0.10. (The 0.10 standard was in Michigan statute before September 30, 2003, the effective date of Public Act 61 of 2003, which lowered the BAC standard to 0.08 from 0.10.). Instead, under the bill, the 0.08 BAC standard increases to 0.10 beginning five years after the State Treasurer publishes a certification under Section 625(28).

### Authorizing Operation of a Vehicle

Section 625(2) of the Code prohibits the owner or person in charge or in control of a vehicle from authorizing or knowingly permitting it to be operated by a person if any of the following apply:

- The person who is under the influence of alcohol, a controlled substance, or other intoxicating substance, or a combination of those.
- The person has a BAC of 0.08 or more.
- The person's ability to operate the vehicle is visibly impaired due to the consumption of alcohol, a controlled substance, or other intoxicating substance, or a combination of those.

Previously, beginning October 1, 2021, the 0.08 BAC standard described above would have increased to 0.10 or more. Instead, under the bill, the 0.08 BAC standard increases to 0.10 beginning five years after the State Treasurer publishes a certification under Section 625(28).

### Zero-Tolerance Offense

Section 625(6) of the Code prohibits a person under the age of 21 from operating a vehicle if the person has any bodily alcohol content (which is commonly referred to as a "zero-tolerance offense"). "Any bodily alcohol content" means either of the following:

- A BAC of 0.02 grams or more but less than 0.08 grams.
- Any presence of alcohol within the person's body resulting from the consumption of alcohol, other than the consumption of alcohol as part of a generally recognized religious service or ceremony.

Previously, beginning October 1, 2021, the BAC standard described above would have increased to a BAC of 0.02 or more but less than 0.10. Instead, under the bill, the BAC standard described above increases to 0.02 or more but less than 0.10 beginning five years after the State Treasurer publishes a certification under Section 625(28).

### Chemical Testing for Alcohol Content

Section 625a of Code specifies that its provisions pertaining to chemical testing of BAC do not limit the introduction of any other admissible evidence bearing upon whether the person meets any of the following:

- Was impaired by, or under the influence of, alcohol, a controlled substance, or other intoxicating substance, or a combination of those.
- Had a BAC of 0.08 or more.
- Had any BAC within his or her body if the person is less than 21 years old.

Previously, beginning October 1, 2021, the BAC standard described above would have increased to 0.10. Instead, under the bill, the 0.08 BAC standard increases to 0.10 beginning five years after the State Treasurer publishes a certification under Section 625(28).

Under the Section 625g of Code, if an operator of a vehicle refuses a chemical test or submits to a chemical test that reveals an unlawful alcohol content, the peace officer who requested the person to submit to the test must take certain actions, including confiscating the person's driver license. "Unlawful alcohol content" means any of the following:

- If the person is under 21, a BAC of 0.02 or more.
- If the person tested was operating a commercial motor vehicle, a BAC of 0.04 or more.

-- If the person is not under 21 or operating a commercial motor vehicle, a BAC of 0.08 or more.

Previously, beginning October 1, 2021, the 0.08 BAC standard described above would have increased to 0.10. Instead, under the bill, the 0.08 BAC standard increases to 0.10 beginning five years after the State Treasurer publishes a certification under Section 625(28).

#### Operating a Commercial Motor Vehicle

Section 625m of the Code prohibits a person from operating a commercial motor vehicle if he or she has a BAC of 0.04 or more but less than 0.08.

Previously, beginning October 1, 2021, the BAC standard described above would have increased to a BAC of 0.04 or more but less than 0.10. Instead, under the bill, the 0.08 BAC standard increases to 0.10 beginning five years after the State Treasurer publishes a certification under Section 625(28).

#### **House Bill 4309**

Under the sentencing guidelines, offense variable 3 is physical injury to a victim. The guidelines require 50 points to be scored if death results from the commission of a crime and the offense or attempted offense involves the operation of a vehicle, vessel, off-road vehicle (ORV), snowmobile, aircraft, or locomotive, and one of several factors applies. One of those factors is that the offender had a BAC of 0.08 or more.

Previously, beginning October 1, 2021, the points had to be scored if the offender had a BAC of 0.10 or more. Instead, under the bill, beginning five years after the State Treasurer publishes a certification under Section 625(28) of the Vehicle Code, the points must be scored if the offender has a BAC of 0.10 or more.

Offense variable 18 is operator ability affected by alcohol or drugs. The guidelines require 10 points to be scored if the offender operated a vehicle, vessel, ORV, snowmobile, aircraft, or locomotive while he or she had a BAC of 0.08 or more but less than 0.15.

Previously, beginning October 1, 2021, the points had to be scored if the offender had a BAC of 0.10 or more but less than 0.15. Instead, under the bill, beginning five years after the State Treasurer publishes a certification under Section 625(28) of the Vehicle Code, the points must be scored if the offender has a BAC of 0.10 or more but less than 0.15.

The guidelines also require five points to be scored under offense variable 18 if the offender operated a vehicle, vessel, ORV, snowmobile, aircraft, or locomotive, and he or she was under 21 and had any bodily alcohol content. "Any bodily alcohol content" includes a BAC of 0.02 or more but less than 0.08.

Previously, beginning October 1, 2021, the term included a BAC of 0.02 or more but less than 0.10. Instead, under the bill, beginning five years after the State Treasurer publishes a certification under Section 625(28) of the Vehicle Code, the term includes a BAC of 0.02 or more but less than 0.10.

#### **House Bill 4220**

Section 1c of PA 213 specifies that a person may not apply to have set aside, and a judge may not set aside, a conviction for certain traffic offenses, including a conviction for OWI committed by any person.

Under the bill, the prohibition on setting aside a conviction for OWI does not apply to a conviction for a first violation OWI if the person applying to have the conviction set aside has not previously applied to have and had a first time OWI offense conviction set aside. However, a conviction for a first violation OWI offense that may be set aside upon application is not eligible for and may not be set aside without application.

In making a determination whether to grant the petition to set aside a first violation OWI offense conviction, the reviewing court may consider whether or not the petitioner has benefited from rehabilitative or educational programs, if any were ordered by the sentencing court, or whether those steps were taken by the petitioner before sentencing for the first violation OWI offense conviction he or she was seeking to set aside. The reviewing court is not constrained by the record made at sentencing. The reviewing court may deny the petition if it is not convinced that the petitioner either has availed himself or herself of rehabilitative or educational programming or benefited from rehabilitative or educational programming he or she has completed.

### **House Bill 4219**

The bill defines "first violation operating while intoxicated offense" as a violation of any of the following committed by an individual who at the time of the violation has no prior convictions for violating Section 625 of the Michigan Vehicle Code:

- Sections 625(1), (2), (3), (6), or (8) of the Vehicle Code.
- A local ordinance substantially corresponding to those sections listed above.
- A law of an Indian tribe substantially corresponding to those sections listed above.
- A law of another state substantially corresponding to those sections listed above.
- A law of the United States substantially corresponding to these sections listed above.

Previously, PA 213 defined "operating while intoxicated" as a violation of any of the following:

- Sections 625 or 625m of the Vehicle Code.
- A local ordinance substantially corresponding to those sections listed above.
- A law of an Indian tribe substantially corresponding to those sections listed above.
- A law of another state substantially corresponding to those sections listed above.
- A law of the United States substantially corresponding to these sections listed above.

Under the bill, the term means a violation of any of offenses listed above *that is not a first violation operating while intoxicated offense*.

MCL 780.621 (H.B. 4219)  
780.621c (H.B. 4220)  
257.625 et al. (H.B. 4308)  
777.33 & 777.84 (H.B. 4309)  
780.621d (S.B. 400)  
777.33 & 777.48 (S.B. 616)  
257.625 et al. (S.B. 617)

Legislative Analyst: Stephen P. Jackson

### **FISCAL IMPACT**

#### **House Bills 4219 and 4220**

The bills likely will not have a noticeable fiscal impact on local court systems. While the bill likely will result in additional expungement filings across the State, it is assumed these filings will not flood the local court systems with additional administrative costs and hearing

requests. There are several fees associated with the expungement process (\$50 to the Michigan State Police (MSP) for a background check, \$10 to \$15 to MSP for fingerprints, \$10 to the Internet Criminal History Access Tool (ICHAT)), but no filing fees that go to a Judiciary restricted fund.

The bills likely will not have a fiscal impact on State government.

### **House Bill 4308**

The bill will have no fiscal impact on State or local units of government; however, allowing the BAC sunset to take effect could have reduced costs for the Michigan Department of Corrections (MDOC) and reduced revenue for local libraries. Under the State's *per se* statute, a person with a BAC of 0.08 grams is considered to be operating while intoxicated; however, the statute previously required the *per se* level to revert back to a BAC of 0.10 grams on October 1, 2021.

The bill will have no fiscal impact on the State or local units as the current BAC thresholds will remain the same; thus, costs associated with them will remain unchanged. (However, absent the bills, the likely result would have been fewer convictions and a reduction in jail times and sentences. As a result, the MDOC could have saved an estimated \$42,400 per prisoner per year, the average annual cost for incarceration in an MDOC facility. Additionally, the average costs for parole and felony probation supervision services averaging \$4,300 annually per supervised offender, also could have been saved. Finally, fewer convictions would have resulted in fewer fines, which would have meant lower revenue for local libraries (which are the beneficiaries of civil fines).)

The bill also preserves existing Federal aid apportionments as it lifts the sunset on the 0.08 BAC standard. Under Federal law (23 USC 163), states that do not comply with at least a 0.08 BAC standard can lose Federal aid through the National Highway Performance Program and the Surface Transportation Program. The Department of Transportation estimates these losses could be up to \$53.0 million in Federal aid per year. Currently, Michigan receives roughly \$1.4 billion in Federal aid per year.

### **House Bill 4309**

The bill will have no fiscal impact on local government and an indeterminate fiscal impact on the State, in light of the Michigan Supreme Court's July 2015 opinion in *People v. Lockridge*, in which the Court ruled that the sentencing guidelines are advisory for all cases. This means that any changes to the guidelines under the bill will not be compulsory for the sentencing judge. As penalties for felony convictions vary, the fiscal impact of any given felony conviction depends on judicial decisions.

### **Senate Bill 400**

The bill will have an indeterminate, though likely negative, fiscal impact on local courts. Additional costs likely will come from an increase in the number of expungement filings for a first violation OWI offense. The number of increased filings is indeterminate and any additional costs must be absorbed by local court systems.

There are several fees associated with the expungement process (\$50 to the MSP for a background check, \$10 to \$15 to MSP for fingerprints, and \$10 to ICHAT), but none of these fees go to a Judiciary restricted fund. Expungement hearings typically do not take very long; however, a large increase in these hearings could increase costs for courts in the form of administrative costs and hearing times.

**Senate Bill 616 and 617**

The bills will have no fiscal impact on State or local government.

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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.