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House Bill 4308 (Substitute H-1 as passed by the Senate)
House Bill 4309 (as passed by the Senate)
Sponsor: Representative Abdullah Hammoud (H.B. 4308)
Representative Graham Filler (H.B. 4309)
House Committee: Judiciary
Senate Committee: Judiciary and Public Safety

Date Completed: 6-29-21

CONTENT

House Bill 4308 (H-1) would amend the Michigan Vehicle Code to do the following:

- **Require the State Treasurer to certify that the State no longer received annual Federal highway construction funding conditioned on compliance with a national blood alcohol limit within 30 days after the State no longer received the funding.**
- **Modify the sunset on which the bodily alcohol content (BAC) that constitutes OWI will increase from 0.08 to 0.10.**

House Bill 4309 would amend the sentencing guidelines within the Code of Criminal Procedure to reflect extending the sunset provision raising the BAC that constitutes OWI.

House Bill 4308 (H-1) and 4309 are tie-barred, and both bills are tie-barred to House Bill 4220, which would allow for the setting aside of a conviction for operating while intoxicated (OWI) under certain circumstances. Each bill would take effect 90 days after its enactment.

House Bill 4308 (H-1)

Certification

The bill would add Section 625(28) to the Code. Under Section 625(28), within 30 days after the State no longer received annual Federal highway construction funding conditioned on compliance with a national blood alcohol limit, the State Treasurer would have to certify that fact. The State Treasurer would have to 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.

Beginning October 1, 2021, the 0.08 BAC standard described above will increase 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 would increase to 0.10 beginning five years after the State Treasurer published 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.

Beginning October 1, 2021, the 0.08 BAC standard described above will increase to 0.10 or more. Instead, under the bill, the 0.08 BAC standard would increase to 0.10 beginning five years after the State Treasurer published 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.

Beginning October 1, 2021, the BAC standard described above will increase to a BAC of 0.02 or more but less than 0.10. Instead, under the bill, the BAC standard described above would increase to 0.02 or more but less than 0.10 beginning five years after the State Treasurer published 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.

Beginning October 1, 2021, the BAC standard described above will increase to 0.10. Instead, under the bill, the 0.08 BAC standard would increase to 0.10 beginning five years after the State Treasurer published 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.

Beginning October 1, 2021, the 0.08 BAC standard described above will increase to 0.10. Instead, under the bill, the 0.08 BAC standard would increase to 0.10 beginning five years after the State Treasurer published 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.

Beginning October 1, 2021, the BAC standard described above will increase to a BAC of 0.04 or more but less than 0.10. Instead, under the bill, the 0.08 BAC standard would increase to 0.10 beginning five years after the State Treasurer published 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.

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

Beginning October 1, 2021, the points must 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 published a certification under Section 625(28) of the Vehicle Code, the points would 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 or.

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

MCL 257.625 et al. (H.B. 4308)
777.33 & 777.84 (H.B. 4309)

Legislative Analyst: Stephen Jackson

FISCAL IMPACT

House Bill 4308 (H-1)

The bill would have no fiscal impact on State or local units of government; however, allowing the BAC sunset to take effect could reduce costs for the Michigan Department of Corrections (MDOC) and reduce revenue for local libraries. Currently, 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 requires the *per se* level to revert back to a BAC of 0.10 grams on October 1, 2021.

Enactment of the bill would have no fiscal impact on the State or local units as the current BAC thresholds would remain the same; thus, costs associated with them would remain unchanged. However, absent the bills, the likely result would be fewer convictions and a reduction in jail times and sentences. As a result, the MDOC could save 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 be saved. Finally, fewer convictions would result in fewer fines, which would lead to lower revenue for local libraries (which are the beneficiaries of civil fines).

The bill also would preserve existing Federal aid apportionments as it would lift 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 loses could be up to \$53.0 million in Federal aid per year. Currently, Michigan receives roughly \$1.4 billion in Federal aid per year.

The new requirement for the State Treasurer would not add additional costs to the Department of Treasury.

House Bill 4309

The bill would 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 would 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.

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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.