

HB 4093 and HB 4131 Talking Points

HB 4093 amends the current law and would eliminate the sunset provision that would revert Michigan back to a .10 BAC standard. HB 4131 amends the current law for sentencing guidelines and maintains .08 without reversion to .10 BAC

Successful passage of this legislation will allow for three things:

1. Maintain .08 BAC standard for OUIL
2. Maintain .04 BAC standard for OUIL in commercial vehicles
3. Maintain .02 BAC for "zero tolerance" standard for individuals under the age of 21

History of .10 to .08 BAC

It is illegal *per se* (in itself) to drive a motor vehicle with a blood alcohol concentration (BAC) at or above a specified level in all States. The previous level in most states had been .10 BAC for drivers, but now all 50 States, the District of Columbia, and Puerto Rico have enacted laws that set a lower level of .08 BAC. In a 1992 Report to Congress, NHTSA recommended that all States lower the illegal *per se* level to .08 for all drivers 21 and older.

In 1998, as part of the Transportation Equity Act for the 21st Century (TEA-21), a new Federal incentive grant was created to encourage States to adopt a .08 BAC illegal *per se* level.

In 2000, Congress passed the DOT Appropriations Act of FY 2001, adopting .08 BAC as the national illegal limit for impaired driving. The statute provides that States that do not adopt a conforming .08 BAC law by October 1, 2003, will be subject to a withholding 2 percent of certain highway construction funds. Each year, the withholding percentage increases by 2 percent, up to 8 percent in FY 2007 and later. Those states that adopt a conforming .08 BAC law within 4 years of any withholding will be reimbursed for those withheld funds. If a State has not adopted a conforming .08 BAC law by October 1, 2007, portions of its withheld funds shall begin to lapse and will no longer be available to the State. Michigan adopted this Standard in 2003.

Key Facts

- In 2002, 41 percent of the 42,815 motor vehicle deaths were alcohol-related. This translates to 17,419 alcohol-related motor vehicle deaths during that year, accounting for an average of one alcohol-related fatality every 30 minutes.
- The National Highway Traffic Safety Administration's (NHTSA) position on the relationship between blood alcohol concentration and driving is that driving performance degrades with every drink.
- A comprehensive NHTSA study provides what is perhaps clear evidence of the significant impairment that occurs in the driving-related skills of all drivers with .08 BAC, regardless of age, gender, or drinking history.
- .08 BAC laws are effective in reducing alcohol-related fatal crashes. At least 10 studies, covering many of the States that have enacted .08 BAC laws, have consistently shown that .08 BAC laws are associated with reductions in alcohol-related fatalities, particularly in

conjunction with the administrative license revocation (ALR) laws that are present in 41 States.

- NHTSA has published several comprehensive studies on the effectiveness of .08 BAC laws. These studies found consistent and persuasive evidence that .08 BAC laws are associated with reduced incidence of alcohol-related fatal crashes. A study of the effectiveness of a .08 BAC law implemented in Illinois in 1997, found that the .08 BAC law was associated with a 13.7 percent decline in the number of drinking drivers involved in fatal crashes. The reduction included drivers at both high and low BAC levels. This is significant because critics of .08 BAC laws have often claimed that these laws do not affect the behavior of high BAC drivers. The study also found that there were no major problems reported by local law enforcement or court systems due to the change in the law. An updated analysis of Illinois's law estimated that 105 lives were saved in the first two calendar years since its implementation.

- In a comprehensive study of drivers involved in fatal crashes in all 50 states and DC from 1982-1997, it was estimated that .08 BAC laws reduced driver alcohol-related fatal crashes by 88 percent.

- A 1999 report by the U.S. General Accounting Office (GAO) reviewed the studies available at that time and found *strong indications that .08 BAC laws, in combination with other drunk driving laws (particularly license revocation laws), sustained public education and information efforts, and vigorous and consistent enforcement, can save lives.* The GAO report also concluded that a .08 (BAC) law can be *an important component of a State's overall highway safety program.*

Why .08?

The research is clear. Virtually all drivers, even those who are experienced drinkers, are significantly impaired at a .08 BAC. As early as 1988, a NHTSA review of 177 studies clearly documented this impairment. NHTSA released a later review of 112 more recent studies, providing additional evidence of impairment at .08 BAC and below. The results of the nearly 300 studies reviewed have shown that, at a .08 BAC level, virtually all drivers are impaired in the performance of critical driving tasks such as divided attention, complex reaction time, steering, lane changing, and judgment.

The risk of being in a crash gradually increases as a driver's BAC increases, but rises more rapidly once a driver reaches or exceeds .08 BAC compared to drivers with no alcohol in their blood stream. A recent study estimated that drivers at .08 to .09 BACs are anywhere from 11 to 52 times more likely to be involved in a fatal crash than drivers at .00 BAC, depending upon their age and gender.

Lowering the *per se* limit is an effective countermeasure that will reduce alcohol-related traffic fatalities, especially when combined with an ALR law. There was a 12 percent reduction in alcohol-related fatalities in California in 1990 after a .08 and an ALR law went into effect. The decrease in alcohol-related fatalities occurred at both high and low BAC levels, including drivers with BAC levels of .20 or greater. A 1996 study at Boston University showed that States adopting .08 laws experienced 16 percent and 18 percent post-law declines in the proportions of fatal crashes involving fatally-injured drivers whose BAC levels were .08 or higher and .15 or higher, respectively. The Centers for Disease Control (CDC) and Prevention concluded that .08

BAC laws are associated with a median 7 percent reduction in alcohol-related traffic fatalities in States that adopt them.

The .08 BAC limit is reasonable and has the potential for saving hundreds of lives and reducing thousands of serious injuries each year.

The public supports a .08 BAC level. A survey conducted in 2001 indicated that 88% of the people in States with .08 laws support the law.

Point-Counterpoint

Opposition to .08 laws generally includes the following arguments:

■ **Point:** In 1999, the U.S. General Accounting Office (GAO) conducted a critical review of the .08 studies and concluded that these laws are not effective in reducing alcohol-related fatalities.

■ **Counterpoint:** This statement is not correct! The GAO report stated that there are “*strong indications that .08 BAC laws, in combination with other drunk driving laws (particularly license revocation laws), sustained public education and information efforts, and vigorous and consistent enforcement, can save lives*”

■ **Point:** “.08 BAC legislation will not affect problem drinker drivers who have high BAC levels.”

■ **Counterpoint:** The latest research shows that .08 BAC laws not only reduce the incidence of impaired driving at lower BAC levels, they also reduce the incidence of impaired driving at higher BAC levels (i.e., over .10). A .08 BAC law serves as a general deterrent to all those who drink and drive because it sends a message that the State is getting tougher on impaired driving, and it makes many people think twice about getting behind the wheel after they have had too much to drink. A .08 BAC law should be a key component of any State’s overall program to reduce impaired driving. While repeat offenders do account for a significant part of the problem, most fatally-injured drinking drivers have no prior alcohol-related offenses.

■ **Point:** .08 BAC laws make criminals out of normal social drinkers.

■ **Counterpoint:** Impairment and crash risk are the issues, not how many drinks it may take to get to a .08 BAC level. Numerous studies have indicated that at a .08 BAC level, virtually all drivers are impaired on critical driving tasks such as divided attention, complex reaction time, steering, lane changing, and judgment.

■ **Point:** In a movement toward “zero tolerance.”

■ **Counterpoint:** A .08 BAC limit is not meant to restrict individuals from drinking alcohol. Rather, the limit exists to prevent individuals from operating a motor vehicle while impaired by alcohol, putting their own lives, and the lives of others at risk.

■ **Point:** .08 BAC laws will overwhelm police and clog the criminal justice system.

■ **Counterpoint:** Two studies, one in California and another in Illinois, looked at the impact of .08 BAC laws on enforcement efforts and the criminal justice system. These studies have

not found any significant problems with the enforcement of lower BAC limits for police or the State courts. I have not heard of anything in Michigan that would support that argument.

In the State of Michigan, alcohol-related crash trend data from 2000-2011 shows what has transpired in Michigan since the .08 law was put into effect. Since 2004 (the first full year that the .08 BAC law was in effect) and 2011, alcohol-involved crashes decreased 32 percent, alcohol-involved fatalities decreased 22 percent, and alcohol-involved fatal crashes decreased 23 percent. (Please note that 2012 crash data is not yet finalized).