



**House  
Legislative  
Analysis  
Section**

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## **DRUNK DRIVING "CLEANUP" BILLS**

**HB 4586 as enrolled  
Public Act 448 of 1994  
Sponsor: Rep. John Llewellyn**

**House Bill 5745 as enrolled  
Public Act 450 of 1994  
Sponsor: Rep. Michael E. Nye**

**Senate Bill 631 as enrolled  
Public Act 449 of 1994  
Sponsor: Sen. William Van Regenmorter**

**Second Analysis (1-20-95)  
House Committee: Judiciary  
Senate Committee: Judiciary**

### ***THE APPARENT PROBLEM:***

Michigan's drunk driving laws, contained in the vehicle code, underwent extensive revision in 1992. Among other things, the 1992 changes expanded the application of drunk driving laws, stiffened penalties for repeat offenders, created special penalties for drunk driving that caused death or incapacitating physical injury, required attempted offenses to be treated as if completed, and required speedy disposition (as manifested by various deadlines for action) of drunk driving cases.

Intended in part to close loopholes in prior law, the revisions have been discovered to be in some places incomplete or vulnerable to misinterpretation. For example, reports are that as a means of avoiding stiff repeat-offender penalties under the 1992 revisions, defendants are getting pre-1992 convictions reconsidered or the conviction dates otherwise changed so that the most recent event carries a pre-1992 arrest date. They then maintain that this offense constitutes the repeat offense and that pre-1992 penalties should apply.

Another newly-identified loophole deals with regard to provisions that are supposed to ensure that the Department of State is informed when a driver tests positive for unlawful blood alcohol content. When a person refuses or fails a chemical test, the arresting officer is to immediately confiscate the license and notify the Department of State via the law enforcement information network (LEIN). However, if the person is unconscious and a blood test is done under a court-ordered warrant, there

are no assurances that the Department of State will be notified of the arrest, or that the person's driving record will reflect the test results.

Another area of concern stems from the provision for special felony penalties (up to five years in prison and/or a fine of \$1,000 to \$5,000) for drunk driving that causes long-term incapacitating injury to another. "Long-term incapacitating injury" is at present defined as an injury that has caused a comatose state, quadriplegic state, or paraplegic state that is likely to continue for one year or more. The definition has been problematic for prosecutions. Obviously, there are many very serious injuries that do not fall within the relatively narrow statutory definition. Loss of a limb, loss of reproductive function, loss of eyesight, and major organ damage all are outside the definition, and thus the drunk driver must sometimes be prosecuted for a less serious offense and punished with lower penalties. The solution, many believe, lies in revising the elements of the offense so that the penalties may have a broader application.

Amendments have been proposed to correct these and other problems with the law.

### ***THE CONTENT OF THE BILLS:***

For the most part, the bills would amend the Michigan Vehicle Code's provisions on drunk driving, including operating a vehicle while impaired by alcohol (OWI), operating a vehicle while under

the influence of alcohol (OUIL, a more serious offense), and other alcohol-related driving offenses; however, House Bill 5745 and Senate Bill 631 contain some provisions that affect nondrinking offenses. The bills would take effect May 1, 1995, but none could take effect unless all three were enacted.

Senate Bill 631 (MCL 257.8a et al.) would do the following, among other things:

**\*\* Expand the definition of "state" to include Indian country (thereby recognizing convictions obtained under tribal jurisdiction).**

**\*\* Elevate licensure sanctions for negligent homicide, manslaughter, and murder resulting from the operation of a motor vehicle. Currently, the offenses are punished with mandatory suspension of 90 days to two years. Under the bill, they would be punished with license revocation and denial, which lasts for at least one year, or up to five years after the date of a revocation or denial (for any reason) occurring within seven years after the date of any prior revocation or denial; in addition a person must meet the requirements of the department.**

**\*\* Mandate license revocation for two (down from four) reckless driving convictions within seven years.**

**\*\* Clarify that current third-offense drunk driving sanctions are to apply if any of the convictions resulted from an arrest on or after January 1, 1992 (the date current sanctions took effect).**

**\*\* Explicitly provide for unlawful bodily alcohol content to be measured by the amount of alcohol in breath or urine, as well as blood.**

**\*\* Eliminate appeal to the circuit court for people denied licenses for failure to answer a citation or for failure to pay traffic or parking fines.**

**\*\* Include convictions for attempted violations within the concept of "prior conviction" for the purposes of drunk driving laws.**

**\*\* Along with House Bill 4586, revise the application of special penalties for OWI or OUIL that caused physical injury to another person. At present, drunk driving that causes another to suffer a "long term incapacitating injury" (defined as causing coma, quadriplegia, hemiplegia, or paraplegia likely to continue for at least one year)**

is a felony punishable by up to five years in prison, a fine of \$1,000 to \$5,000, or both. The bill would apply the penalties to drunk driving that caused "serious impairment of a body function" of another person. "Serious impairment of a body function" would include, but not be limited to, one or more of the following: loss of a limb or use of a limb; loss of a hand, foot, finger or thumb or its use; loss of an eye or an ear or its use; loss or substantial impairment of a bodily function; serious visible disfigurement; a comatose state lasting for more than three days; measurable brain damage or mental impairment; a skull fracture or other serious bone fracture; and, subdural hemorrhage or subdural hematoma.

**\*\* Specify that suspensions for using or furnishing false identification for underage purchase of alcohol are to be conducted according to court order.**

**\*\* In conformity with enrolled House Bill 4323 and enrolled Senate Bill 482, incorporate language regarding license suspensions for underage drinking. (Note: House Bill 4323, which proposed amendments to the vehicle code, was "pocket vetoed," and therefore was not enacted. Senate Bill 482, which proposed amendments to the Liquor Control Act, was enacted as Public Act 447 of 1994, but by its own terms could not take effect unless House Bill 4323 was enacted. For a more complete discussion of the underage drinking proposal, please see the House Legislative Analysis Section's analysis of enrolled House Bill 4323 and Senate Bill 482, dated 1-20-95.)**

House Bill 5745 (MCL 257.625a et al.) would do the following, among other things:

**\*\* Make preliminary breath test (PBT) results admissible in criminal prosecutions for various drunk driving offenses and in administrative hearings. PBT results are admissible now only with regard to challenges over the validity of an arrest. Under the bill, the defense could use a PBT result as evidence of the defendant's breath alcohol content, and the prosecution could use a PBT result to rebut arguments that the defendant's breath alcohol content was lower at the time of the charged offense than when a chemical test was administered. A PBT device could be used for a chemical test if approved under state police rules.**

**\*\* Forbid courts from dismissing drunk driving cases for failure to meet statutory deadlines for**

arraignment, pretrial conference, and final adjudication, and similarly forbid departmental hearing officers from imposing sanctions for failure to comply with certain deadlines for administrative review of licensure sanctions imposed for refusal of chemical tests.

**\*\* Require a police officer to immediately notify the secretary of state (via the law enforcement information network, or LEIN) if a court-ordered chemical test revealed that a driver had an unlawful blood alcohol content. Such a requirement already is in place for drivers who refused testing or who submitted to testing.**

**\*\* Clarify and expand provisions for license confiscation for refusal of a chemical test or "failing" of a chemical test. Confiscation for refusal or failure of a court-ordered test (in addition to tests offered by law enforcement agencies) would be explicitly authorized, and threshold alcohol levels for test failure would be revised to address "unlawful alcohol content," which would be defined to include underage drinking and driving (that is, being under age 21 and having a blood alcohol content of .02 percent or more).**

**\*\* Clarify provisions on duration of temporary permits issued by peace officers who confiscate drivers' licenses for chemical test refusal or positive chemical test results. At present, if a driver refuses a chemical test, or a chemical test reveals an unlawful blood alcohol content, the police officer is to immediately confiscate the driver's license and issue a temporary permit that is valid until either charges are dismissed or a conviction is obtained. Under the bill, the duration of the temporary permit would depend on whether the case was prosecuted. If the case was not prosecuted, the permit would be valid for 90 days after issuance, or until the person's license was suspended for test refusal, whichever was earlier. If the case was prosecuted, the permit would be valid until the earliest of the following: dismissal of charges; acquittal or conviction; or license suspension for test refusal.**

**\*\* Require prosecutors to notify the secretary of state if a case involving a positive chemical test or chemical test refusal is not prosecuted. If a case was not referred for prosecution, the arresting law enforcement agency, rather than the prosecutor, would notify the Department of State.**

**\*\* Revise provisions on certification of ignition interlock devices. Model standards issued by the National Highway Traffic Safety Administration would be adopted as Michigan's standards. A device would be certified as meeting these standards by a department-approved laboratory, which would immediately notify the department of that certification. The department would not include a manufacturer on its list of manufacturers of approved devices unless the manufacturer files an affidavit to the effect that the device prevents a motor vehicle from being started at any time without first determining through a deep lung sample that the operator's breath alcohol level is less than .02 grams per 210 liters of breath. (This is the current statutory standard for ignition interlock devices; for comparison, the presumptive standard for OWI is .07 grams or more, and for OUIL, the standard is .10 grams or more.) The manufacturer would have to immediately notify the department if its device no longer met the standards claimed in the affidavit, and the department would subsequently notify the courts. A court receiving such a notification could not order installation of the device in question, and would have to order the replacement or removal of any already-installed devices.**

**\*\* Require "points" and other license actions to be imposed for attempted commercial vehicle drunk driving the same as if the offense had been completed.**

**\*\* Require courts to notify the secretary of state of convictions for manslaughter and murder resulting from the operation of a motor vehicle, as well as negligent homicide.**

**\*\* Require courts to send abstracts of court records for convictions for manslaughter or murder resulting from the operation of a motor vehicle, as well as for negligent homicide. (Manslaughter and murder resulting from the operation of a motor vehicle currently fall under provisions applying to felonies in which a motor vehicle was used. Those provisions call for prosecutorial notice to defendants and subsequent court determination before conviction records are forwarded to the Department of State. The bill would eliminate the need to follow these procedures for the manslaughter and murder offenses in the same way that negligent homicide is exempted now.)**

**\*\* Forbid expungement of any offense reportable to the secretary of state, including negligent homicide, manslaughter, and murder resulting from the operation of a motor vehicle, and felonies in which motor vehicles were used.**

**\*\* Delete provisions that specify lesser misdemeanor penalties for driving on a suspended license when the suspension was for failure to answer a citation or failure to comply with a court order or judgment. At present, this offense is punishable by no more than 90 days in jail and a \$100 fine. If the suspension was for another reason, however, the maximum penalty for the offense is 90 days in jail and a \$500 fine, with second and subsequent offenses punishable by up to one year in jail and a \$1,000 maximum fine. The bill would make these latter first- and second-offense penalties applicable to all who drove on a suspended license.**

**\*\* Delete language saying that a conviction based on a no-contest plea is not admissible as substantive evidence of conduct at issue in a civil case arising out of the same occurrence. The bill thus would defer to recently-amended Michigan Rules of Evidence that state that evidence regarding a no-contest plea may be admitted in a civil proceeding to support a defense against a claim asserted by the person who made the plea.**

**\*\* Allow restricted licenses to permit a person to drive to and from a place of regularly occurring medical treatment for the person or a member of his or her household or immediate family.**

**\*\* Include underage drinking and driving among the list of offenses for which courts must send abstracts to the Department of State.**

**\*\* Explicitly provide for the proportionate distribution of revenue coming into the drunk driving caseload assistance fund from drunk boating and drunk snowmobiling convictions.**

**\*\* In conformity with enrolled House Bill 4323 and enrolled Senate Bill 482, incorporate references to certain underage drinking offenses in language providing for courts to make reports to the Department of State. (Note: House Bill 4323, which proposed amendments to the vehicle code, was "pocket vetoed," and therefore was not enacted. Senate Bill 482, which proposed amendments to the Liquor Control Act, was enacted as Public Act 447 of 1994, but by its own terms could not take effect**

**unless House Bill 4323 was enacted. For a more complete discussion of the underage drinking proposal, please see the House Legislative Analysis Section's analysis of enrolled House Bill 4323 and Senate Bill 482, dated 1-20-95.)**

**House Bill 4586 (MCL 257.625) would revise application of special penalties for OWI or OUIL that caused physical injury to another person. At present, drunk driving that causes another to suffer a "long term incapacitating injury" (defined as causing coma, quadriplegia, hemiplegia, or paraplegia likely to continue for at least one year) is a felony punishable by up to five years in prison, a fine of \$1,000 to \$5,000, or both. The bill would apply the penalties to drunk driving that caused "serious impairment of a body function" of another person. "Serious impairment of a body function" would include, but not be limited to, one or more of the following: loss of a limb or use of a limb; loss of a hand, foot, finger or thumb or its use; loss of an eye or an ear or its use; loss or substantial impairment of a bodily function; serious visible disfigurement; a comatose state lasting for more than three days; measurable brain damage or mental impairment; a skull fracture or other serious bone fracture; and, subdural hemorrhage or subdural hematoma.**

#### ***FISCAL IMPLICATIONS:***

The Department of State reports that the bills would have no significant fiscal implications for the department. (1-20-94)

#### ***ARGUMENTS:***

##### ***For:***

The bills would make numerous changes improving the state's ability to enforce drunk driving laws and other driving laws as well. They would close loopholes, tighten procedures, improve reporting, and clarify standards. They would increase sanctions for traffic ticket scofflaws, people with repeat offenses for reckless driving, and drunk drivers with prior convictions for attempted drunk driving, and they would broaden the application of special penalties for drunk drivers who cause physical injury to others. Preliminary breath test results would be made admissible in court, and records of vehicle-related offenses criminalized under the penal code, including negligent homicide and manslaughter, would be protected from expungement.



***Against:***

Questions may persist over allowing preliminary breath test results to be admitted as evidence. For one thing, the reliability of PBT results is in doubt; reliability apparently depends at least in part on consistent adherence to good testing protocols. In addition, if PBT results are inconsistent with subsequent chemical test results, the consequences for either prosecution or defense are uncertain. Further, making PBT results admissible appears to trigger certain statutory presumptions for trial, including that a person was not impaired if his or her alcohol content was below the .07 percent standard, that he or she was impaired if it was between .07 and .10 percent, and that he or she was under the influence if it was .10 percent or more. The statutory presumptions would tend to exacerbate any concerns over the reliability of PBT results.

***Against:***

House Bill 5745 contains language forbidding expungement of various violations reportable to the secretary of state, including certain violations, such as negligent homicide, manslaughter, and murder involving a vehicle that are criminalized by the penal code, not the vehicle code. The aim, apparently, is to ensure that chronic drunk driving offenders do not evade escalating sanctions by having old convictions expunged. However, expungement of criminal records is generally covered by Public Act 213 of 1965. While that law does bar expungement of "traffic offenses," it is unclear whether the language of House Bill 5745 is adequate to make the named penal code offenses considered traffic offenses, and thus protected from criminal record expungement. House Bill 5745 may be considered to attempt an unconstitutional amendment by reference. On the other hand, the bill's language may be sufficient to protect at least secretary of state driving records from expungement. If protection against criminal record expungement is the aim, more specific language, in conjunction with amendments to Public Act 213, may be in order.

***For:***

Through revising a special provision regarding drunk driving that caused "long-term incapacitating injury," the legislation would make it possible to appropriately punish a drunk driver whose irresponsibility cause serious and life-altering injury. Stiff felony penalties could be applied under a broader range of circumstances.

***Response:***

Problems with the current definition may point to problems with the underlying provision, which was created as part of the drunk driving reforms of 1991. By punishing not the drunk driving, but the happenstance of whether the drunk driving caused an injury, the provision (and its companion provision that punishes causing a death) contradicts basic premises of criminal law: that one's state of mind is pertinent, and that punishment should be dependant on what one meant to do. Further, perhaps more than other criminal laws, drunk driving laws are meant to deter; their main object should be to prevent people from drinking and driving. For this purpose, special felony penalties for causing an injury or death may be of little benefit; someone who is about to drink and drive is unlikely to do so with any belief that he or she might kill or injure another.