

Legislative Analysis



DRUGGED DRIVING REVISIONS

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House Bill 5383 (Substitute H-2)

House Bill 5385 (Substitute H-3)

Sponsor: Rep. Dan Lauwers

Committee: Judiciary

Complete to 6-2-14

A SUMMARY OF HOUSE BILLS 5383 & 5385 AS REPORTED FROM COMMITTEE

Brief Summary:

Taken together, the bills would:

- Replace references to "preliminary chemical breath analysis" with "preliminary roadside analysis" in the drunk/drugged driving laws.
- Allow a peace officer to require a driver to undergo a preliminary roadside analysis if the officer has reasonable cause to believe a person is operating a vehicle with any unlawful amount of a controlled substance, other intoxicating substance, or alcohol in their blood, breath, or urine.
- Subject a person to the same testing requirements and consequences for driving with any detectable amount of a controlled substance or other intoxicating substance that are currently in place for driving with an unlawful alcohol content.
- Allow a court to impose conditions for release on bail for a charge of driving with the presence of a controlled substance or other intoxicating substance, require the order for bail conditions to be entered into LEIN, and allow either the court or the law enforcement agency to enter the order into LEIN.
- For refusing a preliminary roadside analysis, fine a person responsible for a civil infraction, allow assessment of a fine up to \$100, and assess two points on a person's driving record.

FISCAL IMPACT: A fiscal analysis is in process.

Detailed Summary:

House Bill 5385

House Bill 5385 amends the Michigan Vehicle Code (MCL 257.320a et al.) to, among other things, replace references to *preliminary chemical breath analysis* (commonly known as breathalyzer tests) with *preliminary roadside analysis*. The bill would add a new section to define "preliminary roadside analysis" to mean the on-site taking of a preliminary breath test from the breath of a person or the performance and observation of a field sobriety test for the purpose of detecting the presence of any of the following

within the person's body: 1) alcoholic liquor; 2) a Schedule 1-5 controlled substance; or 3) any other intoxicating substance.

Preliminary Roadside Analysis

Currently, a peace officer who has reasonable cause to believe a person, commercial motor vehicle operator, or person under 21 years of age is driving in violation of the code's prohibition regarding alcohol, may require the person to submit to a preliminary chemical breath analysis (Breathalyzer test, or PBT). The bill would instead refer to a *preliminary roadside analysis* and would include the consumption of a controlled substance or other intoxicating substance or a combination of all three.

License sanction/civil fine

Before requesting a person to submit to a preliminary roadside analysis, a peace officer would have to first advise the person that refusal to submit to the analysis would subject the person to a civil infraction with a possible fine of not more than \$100. In addition, a person refusing the roadside analysis would be assessed two points on his or her driving record. (Note: Currently under the code, a commercial motor vehicle operator who refuses a PBT is guilty of a misdemeanor punishable by imprisonment for not more than 93 days and/or a fine of \$100. The bill would retain this provision but refer instead to refusal to submit to a preliminary roadside analysis.)

625g Temporary license

Currently, under Section 625g of the code, a person who refuses a chemical test (i.e., a blood test) or submits to the test voluntarily or under a court order and the test reveals an unlawful alcohol content, has the driver's license confiscated and destroyed and a temporary one issued (if eligible for one).

The bill would apply the current provisions also to a person who fails a preliminary roadside analysis, and would apply the provisions to having an unlawful alcohol content or the presence of a controlled substance or other intoxicating substance, or any combination of the three.

[Section 625 of the code defines *intoxicating substance* to mean any substance, preparation, or a combination of substances and preparations other than alcohol or a controlled substance, that is either of the following:

- Recognized as a drug in any of the following publications or their supplements:
 - The official United States pharmacopoeia.
 - The official homeopathic pharmacopoeia of the United States.
 - The official national formulary.
- A substance, other than food, taken into a person's body, including, but not limited to, vapors or fumes, that is used in a manner or for a purpose for which it was not intended, and that may result in a condition of intoxication.]

House Bill 5383

House Bill 5383 amends the Code of Criminal Procedure (MCL 765.6b) to make the following changes:

- Current law allows a court to place conditions on a person's release on bail, to have the order for the "protective conditions" be entered into LEIN (Law Enforcement Information Network) by a law enforcement agency within the court's jurisdiction, and to subject the person to arrest if the conditions are violated. The bill would allow the *issuing court* as well as the law enforcement agency to enter the order or any amended order into LEIN.
- The bill would also create a similar provision that would pertain to release after an arrest on a charge of driving with the presence of a controlled substance or other intoxicating substance.

Specifically, if a defendant had submitted to a preliminary roadside analysis, and the analysis showed the presence of a controlled substance or other intoxicating substance, a judge or district court magistrate could release the defendant on bail subject to the following conditions reasonably necessary for the protection of the public:

- The defendant could not operate a motor vehicle under the influence of alcohol, a controlled substance, or other intoxicating substance.
- A violation of the above would subject the defendant to arrest without a warrant, to forfeiture or revocation of bail, and to being held in custody prior to arraignment.

The defendant would have to be informed, in a writing personally delivered or orally, of the above conditions. Either the issuing court or a law enforcement agency within the court's jurisdiction would have to enter the order into LEIN. In addition, the court or law enforcement agency would have to immediately enter an order or amended order into LEIN. If the order or amended order were rescinded, the court or law enforcement agency would have to immediately remove the order or amended order from LEIN upon its expiration.

The bill would also revise the definition of "electronic monitoring device" to apply not just to GPS models that track the location of an individual, but also devices that monitor an individual's blood alcohol content.

House Bill 5383 is tie-barred to House Bill 5385, meaning that it could not take effect unless HB 5385 is also enacted into law.

BRIEF DISCUSSION OF THE ISSUES:

The Michigan Vehicle Code has long prohibited operating a motor vehicle under the influence or impairment of a controlled substance, but some of the other provisions of the code have not caught up. House Bills 5383 and 5385 will bring "drugged driving" laws up to par with the drunk driving provisions. Processes and procedures in place for drunk driving will now apply also to drugged driving. Driving under the influence of, or while impaired by, certain prescription drugs or illegal drugs such as "meth" is as dangerous as driving while drunk or impaired by alcohol.

Under House Bill 5385, preliminary roadside analyses will allow officers to conduct both Breathalyzer tests and field sobriety tests to detect the presence of not just alcohol, but also controlled substances and other intoxicating substances. The definition of "controlled substance" would include controlled substances listed in Schedules 1-5 – which includes certain prescription medications as Vicodin, Valium, and Ambien, and also illegal substances such as heroin, meth, cocaine, Ecstasy, spice, marihuana, hallucinogens, and other designer drugs. (The Michigan Medical Marihuana Act does not exempt patients with a valid medical marihuana registration from the drugged driving laws.) The bill as substituted would not require testing of saliva for the purpose of detecting the presence of a controlled substance.

Importantly, the bill will apply the provisions known as a 625g permit to drugged driving cases. Under Section 625g, a person's license can be confiscated and/or destroyed under certain conditions relating to operation of a vehicle with the presence of alcohol, such as failing a Breathalyzer test or a chemical blood test, or refusing to submit to a chemical test. Currently, peace officers must notify the secretary of state via LEIN of the issuance of the temporary license. If the test results do not show the presence of alcohol, the original license is returned to the driver. If positive, then criminal and/or license sanctions may be imposed. House Bill 5385 will expand these provisions to apply to a driver suspected of operating a vehicle with the presence of a controlled substance or other intoxicating substance.

The significance of specifically applying drunk driving provisions to drugged driving was underscored last year in a case in which a woman had six toxicology tests pending from different traffic stops. Since Section 625g currently only refers to cases involving alcohol, the officers involved in the different arrests never notified the secretary of state after a stop, and LEIN was never updated to show she had multiple arrests for suspicion of drugged driving and pending toxicology tests. Before any of the results of those tests were in, the woman was involved in yet another drugged driving incident, this time crossing over the center line of a highway and striking another vehicle, killing two young men. There is no certainty, of course, but had the vehicle code been clear that officers could follow Section 625g procedures for drugged driving related arrests, perhaps those young men would still be alive.

House Bill 5383 would allow a court to prohibit a person released on bail pending arraignment for a drugged driving arrest from driving a motor vehicle, and require the

court or law enforcement agency involved to enter the order into LEIN. The benefit of the bill would be to alert peace officers on a subsequent stop that the driver is already facing criminal drugged driving charges and is driving in violation of a court order. The person could then be arrested on the spot, bail revoked, and the public protected from a dangerous driver.

POSITIONS:

The Department of State Police testified in support of the bills. (4-17-14)

The St. Clair County Prosecuting Attorney testified in support of the bills. (4-17-14)

The Prosecuting Attorneys Association of Michigan indicated support for the bills. (5-8-14)

The National Patients Rights Association indicated support for the bills. (5-15-14)

The Michigan Sheriffs' Association indicated support for the bills. (5-15-14)

The ACLU of Michigan has a neutral position on the bills. (5-23-14)

The Cannabis Stakeholders Group has a neutral position on House Bill 5385. (5-23-14)

Americans for Safe Access indicated a neutral position on HB 5383. (5-15-14)

Legislative Analyst: Susan Stutzky
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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.