



Senate Fiscal Agency  
P. O. Box 30036  
Lansing, Michigan 48909-7536

## BILL ANALYSIS



Telephone: (517) 373-5383  
Fax: (517) 373-1986

House Bill 4093 (Substitute H-2 as passed by the House)  
House Bill 4131 (Substitute H-1 as passed by the House)  
Sponsor: Representative Andrea LaFontaine (H.B. 4093)  
Representative Klint Kesto (H.B. 4131)  
House Committee: Criminal Justice  
Senate Committee: Judiciary

Date Completed: 4-9-13

**CONTENT**

**House Bill 4093 (H-2)** would amend the Michigan Vehicle Code to delay until **October 1, 2018**, the date on which the bodily alcohol content (BAC) that constitutes operating while intoxicated will increase from **0.08 to 0.10**. Currently, operating while intoxicated includes operating a vehicle with a BAC of **0.08 or more**, but the BAC standard is scheduled to increase to **0.10 on October 1, 2013**.

**House Bill 4131 (H-1)** would amend the Code of Criminal Procedure to apply certain sentencing guidelines scores to drivers with a BAC of **0.08 or more until October 1, 2018**, rather than **October 1, 2013**.

The bills are tie-barred.

**House Bill 4093 (H-2)****Operating while Intoxicated**

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 alcohol, a controlled substance, or other intoxicating substance.
- Has a BAC of 0.08 gram or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.
- Has a BAC of 0.17 gram or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine (sometimes called super drunk).

Beginning October 1, 2013, 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.)

Under the bill, the definition of "operating while intoxicated" would continue to apply to a person who had a BAC of 0.08 or more until October 1, 2018, when the BAC standard would revert to 0.10.

#### Authorizing Operation of a Vehicle

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 who has a BAC of 0.08 or more or, beginning October 1, 2013, a BAC of 0.10 or more. Under the bill, the prohibition would refer to a person with a BAC of 0.08 or more or, beginning October 1, 2018, a BAC of 0.10 or more.

#### Zero-Tolerance Offense

The Code prohibits a person who is under 21 years of age from operating a vehicle if he or she has any bodily alcohol content (which is commonly referred to as a "zero-tolerance offense"). "Any bodily alcohol content" includes a BAC of 0.02 or more but less than 0.08 or, beginning October 1, 2013, a BAC of 0.02 or more but less than 0.10. Under the bill, the term would include a BAC of 0.02 or more but less than 0.08 or, beginning October 1, 2018, a BAC of 0.02 or more but less than 0.10.

#### Chemical Testing for Alcohol Content

The Code specifies that its provisions pertaining to chemical testing of bodily alcohol content do not limit the introduction of any other admissible evidence bearing upon whether the person had a BAC of 0.08 or more or, beginning October 1, 2013, a BAC of 0.10 or more. Under the bill, that provision would apply to other evidence that the person had a BAC of 0.08 or more or, beginning October 1, 2018, a BAC of 0.10 or more.

Under the 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", if the person is not under 21 or operating a commercial motor vehicle, means a BAC of 0.08 or more or, beginning October 1, 2013, a BAC of 0.10 or more. Under the bill, it would mean a BAC of 0.08 or more or, beginning October 1, 2018, a BAC of 0.10 or more.

#### Operating a Commercial Motor Vehicle

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 or, beginning October 1, 2013, a BAC of 0.04 or more but less than 0.10. Under the bill, the prohibition would apply to a commercial vehicle driver with a BAC of 0.04 or more but less than 0.08 or, beginning October 1, 2018, a BAC of 0.04 or more but less than 0.10.

### **House Bill 4131 (H-1)**

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 or, beginning October 1, 2013, had a BAC of 0.10 or more. Under the bill, the points would have to be scored if the offender had a BAC of 0.08 or more or, beginning October 1, 2018, had 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 or, beginning October 1, 2013, had a BAC of 0.10 or more but less than 0.15. Under the bill, the points would have to be scored if the offender had a BAC of 0.08 or more or, beginning October 1, 2018, had a BAC of 0.10 or more.

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, 2013, a BAC of 0.02 or more but less than 0.10. Under the bill, the term would include a BAC of 0.02 or more but less than 0.08 or, beginning October 1, 2018, a BAC of 0.02 or more but less than 0.10.

MCL 257.625 et al. (H.B. 4093)  
777.33 & 777.48 (H.B. 4131)

Legislative Analyst: Patrick Affholter

### **FISCAL IMPACT**

Transportation Funding. Failure to delay or remove the current sunset date of October 1, 2013, that will allow the BAC standard to increase to 0.10 will result in a loss to the Michigan Department of Transportation of an estimated \$50.0 million in annual Federal highway funding. Current Federal regulations require states to have in place a standard that sets the BAC at 0.08. Failure to do so will result in the withholding of 6% of federally apportioned National Highway Performance Program and Surface Transportation Program funding. For Michigan, this equated to a withholding penalty of the estimated \$50.0 million annually. The bill would prevent this loss of funding.

Criminal Justice. Operating a vehicle while intoxicated is one of the most common crimes that result in felony dispositions in Michigan. In 2011, approximately 4,300 felony dispositions were related to this offense, and of those offenders approximately 16% served time in prison (while the remaining received jail, probation, or both). Therefore, changes to the law prohibiting driving while intoxicated have the potential to create a significant fiscal impact on both State and local government. If the law were allowed to revert to the 0.10 BAC standard from the current 0.08 BAC standard, there could be a reduction in the number of felony convictions and there could be a corresponding drop in the costs of incarceration and community supervision for both State and local governments. Additionally, there could be reductions in fine revenue, which otherwise will flow to public libraries. By delaying the sunset that will allow the BAC standard to increase, these bills would prevent the potential reduction in felony dispositions and prevent a potential reduction associated fine revenue. The fiscal impact of criminal justice costs (apart from the impact on Federal funding) is indeterminate, but likely negative as the costs of incarceration and community supervision generally outweigh the associated fine revenue.

Secretary of State. The Michigan Department of State has indicated that retaining the BAC at 0.08 would have relatively no fiscal impact on the Department's revenue.

Fiscal Analyst: Joe Carrasco  
Dan O'Connor

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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.