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House Bill 5383 (Substitute H-2 as passed by the House)  
House Bill 5385 (Substitute H-3 as passed by the House)  
Sponsor: Representative Dan Lauwers  
House Committee: Judiciary  
Senate Committee: Judiciary

Date Completed: 9-4-14

### **CONTENT**

**House Bill 5385 (H-3)** would amend the Michigan Vehicle Code to do the following:

- Replace provisions for a preliminary chemical breath analysis with provisions for a "preliminary roadside analysis", which would determine the presence of alcohol, a controlled substance, or any other intoxicating substance in a driver's body.
- Authorize a peace officer to require a driver to submit to a preliminary roadside analysis if the officer had reasonable cause to believe that the person's ability to drive was affected by his or her consumption of alcohol, a controlled substance, or another intoxicating substance.
- Require two points to be entered on a person's driving record for refusal to submit to a preliminary roadside analysis, and provide that refusal would be a civil infraction (or a misdemeanor in the case of a commercial vehicle driver).

**House Bill 5383 (H-2)** would amend Chapter V (Bail) of the Code of Criminal Procedure to do the following with respect to a defendant who had submitted to a preliminary roadside analysis that revealed the presence of a controlled substance or other intoxicating substance:

- Authorize the court to release the defendant subject to conditions necessary for the protection of the public.
- Require the court order to be entered into the Law Enforcement Information Network (LEIN).
- Require the defendant to be informed that, as a condition of release, he or she could not operate a motor vehicle under the influence of alcohol, a controlled substance, and/or another intoxicating substance.
- Require the defendant to be informed that he or she would be subject to warrantless arrest and bail revocation if he or she violated that condition.

Also, with respect to a defendant who is released subject to conditions necessary for the protection of another person, the bill would require the court order to be entered into LEIN either by the issuing court or (as currently required) by a law enforcement agency.

In addition, the bill would include in the definition of "electronic monitoring device" an instrument used to monitor an individual's blood alcohol content.

Both bills would take effect 90 days after they were enacted. House Bill 5383 (H-2) is tied to House Bill 5385.

### **House Bill 5385 (H-3)**

#### Submission to Preliminary Roadside Analysis

Currently, a peace officer may require a person to submit to a preliminary chemical breath analysis if the officer has reasonable cause to believe that the person was operating a motor vehicle upon a public highway or other place open to the public or generally accessible to motor vehicles, and that the person might have affected his or her ability to operate a vehicle by the consumption of alcoholic liquor, or reasonable cause to believe that a person was operating a commercial motor vehicle while his or her blood, breath, or urine contained any measurable amount of alcohol or while he or she had any detectable presence of alcoholic liquor, or reasonable cause to believe that a person under 21 years old was operating a vehicle upon a public highway or other place open to the public or generally accessible to motor vehicles while he or she had any bodily alcohol content (as defined in the Code).

The bill would retain these provisions but refer to a "preliminary roadside analysis" rather than a "preliminary chemical breath test", and would refer to the consumption of, any measurable amount of, or any detectable presence of "alcoholic liquor, a controlled substance, or other intoxicating substance".

The bill would define "preliminary roadside analysis" as 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:

- Alcoholic liquor.
- A controlled substance, as defined in Section 7104 of the Public Health Code.
- Any other intoxicating substance, as defined in Section 625 of the Vehicle Code.

(The Public Health Code definition of "controlled substance" refers to a drug, substance, or immediate precursor included in Schedules 1 to 5 of Part 72 (Controlled Substances) of the Code.

Section 625 of the Vehicle Code defines "intoxicating substance" as 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 the Official United States Pharmacopoeia, the Official Homeopathic Pharmacopoeia of the United States, or the Official National Formulary, or the publication's supplement.
- A substance, other than food, taken into a person's body, including 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.)

#### Refusal to Submit

Currently, if a person under 21 years old refuses to submit to a preliminary chemical breath analysis required by a peace officer, the Secretary of State must enter two points on the person's driving record. Under the bill, if any person refused to submit to a preliminary roadside analysis required by a peace officer, the Secretary of State would have to enter two points on his or her driving record.

Currently, a person who refuses to submit to a preliminary chemical breath analysis upon a lawful request by a peace officer is responsible for a civil infraction. (As a rule, the maximum fine for a civil infraction under the Code is \$100.) If the person was operating a commercial motor vehicle, the refusal is a misdemeanor punishable by imprisonment for up to 93 days, a maximum fine of \$100, or both. Under the bill, these penalties would apply to the refusal to submit to a preliminary roadside analysis.

#### Other Applicable Provisions

Under the bill, provisions that currently apply to a preliminary chemical breath analysis would apply to a preliminary roadside analysis. These include provisions that do the following:

- Allow a peace officer to arrest a person based on the results of the analysis.
- Specify that the results of an analysis are admissible in a criminal prosecution for operating while intoxicated, under the influence, or visibly impaired, or with any amount of a Schedule 1 controlled substance in the person's body.
- Specify that the results are admissible for certain purposes in an administrative hearing.
- Require a peace officer to use the results of an analysis to determine whether to order a commercial driver out-of-service.
- Specify that a person who submits to an analysis remains subject to other requirements for purposes of chemical tests.

#### Other Chemical Test; Other Intoxicating Substance

Various provisions apply with respect to chemical tests and analysis of a person's blood, urine, or breath other than a preliminary chemical breath analysis. Under the bill, these provisions would apply with respect to chemical tests and analysis other than a preliminary roadside analysis.

The provisions in question refer in various places to the amount of alcohol or presence of a controlled substance or both in a driver's blood or urine. (For example, the amount of alcohol or the presence of a controlled substance or both is admissible into evidence in any civil or criminal proceeding.) The bill would refer to the presence of a controlled substance or "other intoxicating substance".

Currently, if a person refuses a chemical test other than a preliminary chemical breath analysis, or if a chemical test is performed and it reveals an unlawful alcohol content, the peace officer who requested the person to submit to the test must confiscate and destroy his or her license, issue a temporary license or permit if the person is otherwise eligible, send the Secretary of State a copy of the report of the person's refusal, notify the Secretary of State via LEIN that a temporary license or permit has been issued.

Under the bill, these requirements also would apply if a person failed a preliminary roadside analysis, and the peace officer would have to take the actions described above if a chemical test revealed an unlawful alcohol content or the presence of a controlled substance or other intoxicating substance, or any combination of them.

In addition, the bill would refer to the amount of alcohol or presence of a controlled substance or other intoxicating substance, or any combination of them, in the Code's implied consent provision (under which a person who drives on a public highway in the State is considered to have given consent to chemical tests of his or her blood, breath, or urine if he or she is arrested for an offense listed in the Code).

## **House Bill 5383 (H-2)**

The Code of Criminal Procedure authorizes a judge or district court magistrate to release a defendant subject to conditions reasonably necessary for the protection of one or more named people. The judge or magistrate must inform the defendant of the specific conditions imposed and that, if the defendant violates a condition of release, he or she will be subject to arrest without a warrant and may have his or her bail forfeited or revoked and new conditions of release imposed.

The bill also would allow a judge or district court magistrate to release a defendant subject to conditions reasonably necessary for the protection of the public if he or she had submitted to a preliminary roadside analysis that revealed the presence of a controlled substance or other intoxicating substance. The judge or magistrate would have to inform the defendant on the record, orally or by a writing that was personally delivered to the defendant, of both of the following:

- If the defendant were released under this provision, he or she could not operate a motor vehicle under the influence of alcoholic liquor, a controlled substance, or another intoxicating substance, or any combination of them, as a condition of release.
- If the defendant violated that condition of release, he or she would be subject to arrest without a warrant, his or her bail would be forfeited or revoked, and he or she would not be released from custody before arraignment.

The judge's or magistrate's order would have to be entered into LEIN either by the issuing court or by a law enforcement agency within the court's jurisdiction. If the order or an amended order were rescinded, the court or law enforcement agency would have to remove the order or amended order from LEIN upon its expiration.

Currently, when a judge or district court magistrate releases a defendant subject to protective conditions, the judge or magistrate must immediately direct a law enforcement agency within the court's jurisdiction to enter the order or amended order into LEIN. If the order or amended order is rescinded, the judge or magistrate must order the law enforcement agency to remove the order from LEIN.

The bill, instead, would require the judge or magistrate to direct that an order or amended order be issued into LEIN, and the order would have to be entered either by the issuing court or by a law enforcement agency within the court's jurisdiction. If the order or amended order were rescinded, the court or law enforcement agency would have to remove it from LEIN.

Currently, if a defendant who is charged with a crime involving domestic violence or any other assaultive crime is released subject to a protective order, the judge or magistrate may order the defendant to wear an electronic monitoring device as a condition of release. As used in this provision, "electronic monitoring device" means "any electronic device or instrument that is used to track the location of an individual...". Under the bill, the term also would include an electronic device or instrument used to monitor an individual's blood alcohol content.

MCL 765.6b (H.B. 5383)  
257.320a et al. (H.B. 5385)

Legislative Analyst: Suzanne Lowe

### **FISCAL IMPACT**

House Bill 5385 (H-3) would replace references to "preliminary chemical breath analysis" with "preliminary roadside analysis", which would expand the test to detect, in addition to alcohol, Schedule 1-5 controlled substances or any other intoxicating substances. A refusal of the preliminary roadside analysis would carry the same penalty as prescribed for a refusal

of the chemical breath analysis: a \$100 maximum civil infraction fine or, for a person driving a commercial vehicle, a misdemeanor penalty of up to \$100 and/or 93 days in jail. There would be a cost to local courts and jail systems if the number of refusals increased and the offenders were sentenced to serve time in jail. Any increased fine revenue would be credited to public libraries.

The bills would require officers to adjust their roadside procedures and would require local courts and state agencies to augment the entry of data into the LEIN system. These requirements would result in negligible costs to local and State government, which could be assumed within their existing resources.

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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.