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BILL ANALYSIS

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House Bill 4655 (Substitute H-1 as passed by the House)  
House Bill 4656 (Substitute H-2 as passed by the House)  
Sponsor: Representative Gary A. Newell  
House Committee: Health Policy  
Senate Committee: Health Policy

Date Completed: 12-3-03

### **CONTENT**

**House Bills 4655 (H-1) and 4656 (H-2) would amend the Public Health Code and the Michigan Penal Code, respectively, to do the following:**

- **Prohibit a licensed health care professional from practicing with a bodily alcohol content (BAC) of .05 gram or more or while under the influence of a controlled substance.**
- **Provide for administrative sanctions by the Department of Consumer and Industry Services (DCIS) for health professionals who violated the prohibition.**
- **Prescribe criminal penalties for a health professional who violated the prohibition.**
- **Allow the charge for a first offense to be dismissed if the patient were not injured and other conditions were met.**
- **Allow a peace officer who had reasonable cause to believe a person was a violator to require the person to submit to a chemical analysis of blood, breath, or urine.**
- **Require a court to order a person convicted of a violation to participate in the Health Professional Recovery Program.**

The bills are tie-barred to each other. They are described in further detail below.

### **House Bill 4656 (H-2)**

#### **Criminal Penalties**

Under Section 430 of the Penal Code, any physician or other person who, while in a state of intoxication, prescribes a poison, drug, or medicine to another person is guilty of a misdemeanor punishable by imprisonment for up to one year or a maximum fine of \$1,000. The bill would delete that provision.

Under the bill, a licensed health care professional who did either of the following would be guilty of a misdemeanor:

- Engaged in the practice of his or her health profession with a BAC of .05 or more gram per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.
- Engaged in the practice of his or her health profession while he or she was under the influence of a controlled substance and, due to the illegal or improper use of the controlled substance, his or her ability to engage safely and skillfully in the practice of his or her health profession was visibly impaired.

If the person's conduct did not result in physical harm or injury to the patient and the person had not been convicted previously of a violation, the court, without entering a judgment of guilt

and with the consent of the accused and the prosecuting attorney, could defer further proceedings and place the accused on probation upon terms and conditions that would have to include, at a minimum, participation in the Health Professional Recovery Program. Upon violation of a term or condition, the court could enter an adjudication of guilt and proceed as provided for a first offense. Upon fulfillment of the terms and conditions, the court would have to discharge the person and dismiss the proceedings. Discharge and dismissal would have to be without adjudication of guilt and would not be a conviction for purposes of the bill or for purposes of disqualifications and disabilities imposed by law upon conviction of a crime, including additional penalties imposed for a subsequent conviction under the bill. There could be only one discharge and dismissal as to an individual. The Records and Identifications Division of the Michigan State Police would have to retain a nonpublic record of an arrest and discharge or dismissal. The record could be furnished only to a court or police agency upon request for the purpose of showing whether the accused person had already once used a discharge or dismissal.

For a first offense, the violation would be punishable by up to 180 days' imprisonment or a maximum fine of \$1,000, or both. For a second or subsequent offense, the penalty would be imprisonment for up to one year or a maximum fine of \$1,000, or both.

If an individual were convicted of violating the bill, the court would have to order him or her to participate in the Health Professional Recovery Program established under Section 16167 of the Code. (The Health Professional Recovery Program is a nondisciplinary, treatment-oriented program for impaired health professionals. If a Program consultant determines that a health professional may be impaired, he or she may be admitted into the Program if he or she acknowledges the impairment, voluntarily withdraws from or limits the scope of his or her practice, and agrees to participate in a treatment plan. The Code defines "impairment" as the inability or immediately impending inability of a health professional to practice his or her health profession in a manner that conforms to the minimum standards of acceptable and prevailing practice for that health profession due to the health professional's substance abuse, chemical dependency, or mental illness; or the use of drugs or alcohol that does not constitute substance abuse or chemical dependency.)

The bill states that it would not prohibit the individual from being charged with, convicted of, or sentenced for any other violation of law arising out of the same transaction as a violation of the bill in lieu of being charged with, convicted of, or sentenced for the violation of the bill.

### Chemical Analysis

The bill would allow a peace officer who had reasonable cause to believe an individual was engaging in either of the prohibited activities to require the person to submit to a chemical analysis of his or her breath, blood, or urine. Before an individual was required to do so, the peace officer would have to inform him or her of the following:

- The individual could refuse to submit to the chemical analysis, but if he or she refused, the officer could obtain a court order requiring the person to submit.
- If the individual submitted to the analysis, he or she could obtain it from a person of his or her own choosing.

The bill specifies that a peace officer's failure to inform the individual would not render the results of the chemical analysis inadmissible as evidence in a criminal prosecution, a civil action, or any administrative action arising out of a violation.

The collection and testing of breath, blood, or urine specimens would have to be conducted in the same manner in which those specimens are collected and tested for alcohol- and controlled substance-related driving violations under the Michigan Vehicle Code. (The Michigan Vehicle Code mandates that a sample or specimen of urine or breath be taken and collected in a

reasonable manner. Only a licensed physician, or an individual operating under the physician's delegation, qualified to withdraw blood and acting in a medical environment, may withdraw blood at a peace officer's request to determine the presence of alcohol or a controlled substance in the person's blood.)

### Immunity

The bill's provisions would not apply to a licensed health care professional who in good faith rendered emergency care without compensation at the scene of an emergency unless his or her acts or omissions amounted to gross negligence or willful and wanton misconduct.

### **House Bill 4655 (H-1)**

Under the Public Health Code, the DCIS may investigate activities related to the practice of a health profession by a licensee, a registrant, or an applicant for licensure or registration. The Department must report its findings to the appropriate disciplinary subcommittee, which must impose administrative sanctions if it finds that personal disqualifications, such as incompetence, mental or physical inability, lack of good moral character, or conviction of certain misdemeanors or felonies exist. The bill would add to the personal disqualifications conviction of a violation of Section 430 of the Michigan Penal Code. A certified copy of the court record would be conclusive evidence of the conviction.

Under the Public Health Code, after finding the existence of one or more of the grounds for disciplinary subcommittee action, a subcommittee must impose specified sanctions. For a violation of Section 430 of the Penal Code, the bill would require the subcommittee to order the limitation, suspension, revocation, or denial of a license or registration; probation; restitution; community service; and/or a fine.

MCL 750.430 (H.B. 4656)  
333.16221 & 333.16226 (H.B. 4655)

Legislative Analyst: Julie Koval

### **FISCAL IMPACT**

#### **House Bill 4655 (H-1)**

The bill would have no fiscal impact on State or local government.

#### **House Bill 4656 (H-2)**

The bill would have an indeterminate fiscal impact on State and local government.

There are no statewide data to indicate how many offenders are convicted of the existing misdemeanor or what types of penalties they receive. Local units of government incur the costs of both misdemeanor probation and incarceration, which vary by county. To the extent that the bill would decrease the maximum sentence for a first offense from one year to 180 days, it could decrease local incarceration costs. On the other hand, by expanding the offense to include all licensed health care professionals engaging in the practice of a health profession while under the influence of either alcohol or a controlled substance, the bill could increase the number of potential offenders, thereby increasing local corrections costs.

Fiscal Analyst: Maria Tyszkiewicz  
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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.