



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

## BILL ANALYSIS



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

Senate Bill 177 (as introduced 2-24-21)  
Sponsor: Senator Ed McBroom  
Committee: Judiciary and Public Safety

Date Completed: 4-14-21

**CONTENT**

**The bill would amend Section 1c of Public Act 213 of 1965, which provides for setting aside convictions in certain criminal cases, to specify that the prohibition against setting aside a conviction for operating while intoxicated (OWI) would not apply to a first violation if the person had not previously applied to have and had had a first time OWI offense conviction set aside.**

Section 1c specifies that a person may not apply to have set aside, and a judge may not set aside, a conviction for certain traffic offenses, including a conviction for OWI committed by any person.

Under the bill, the prohibition on setting aside a conviction for OWI would not apply to a conviction for a first violation operating while intoxicated if the person applying to have the first violation OWI offense conviction set aside had not previously applied to have and had had a first time operating while intoxicated offense conviction set aside. However, a conviction for a first violation OWI offense that could be set aside upon application would not be eligible for and could not be set aside without application.

"First violation operating while intoxicated offense" would mean a violation of any of the following committed by an individual who at the time of the violation has no prior convictions for violating Section 625 of the Michigan Vehicle Code:

- Sections 625(1), (2), (3), (6), or (8) of the Vehicle Code (see **BACKGROUND** for more information on these offenses).
- A local ordinance substantially corresponding to those sections listed above.
- A law of an Indian tribe substantially corresponding to those sections listed above.
- A law of another state substantially corresponding to those sections listed above.
- A law of the United States substantially corresponding to these sections listed above.

"Operating while intoxicated" would mean a violation of any of the following that is not a first violation operating while intoxicated offense:

- Sections 625 or 625m of the Vehicle Code.
- A local ordinance substantially corresponding to those sections listed above.
- A law of an Indian tribe substantially corresponding to those sections listed above.
- A law of another state substantially corresponding to those sections listed above.
- A law of the United States substantially corresponding to these sections listed above.

The bill would take effect on April 11, 2021.

MCL 780.621c

## **BACKGROUND**

Section 625(1) of the Vehicle Code prohibits a person from operating a vehicle if the person is operating while intoxicated. "Operating while intoxicated" means any of the following:

- The person is under the influence of alcoholic liquor, a controlled substance, or other intoxicating substance, or a combination of those.
- The person has a blood alcohol content (BAC) of 0.08 grams per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine (or 0.10 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine, beginning October 1, 2021).
- The person has a BAC of 0.17 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.

Section 625(2) prohibits the owner or person in charge of a vehicle from authorizing or knowingly permitting the vehicle to be operated by a person who is under the influence of alcoholic liquor, a controlled substance, or other intoxicating substance, or a combination of those; the person has a BAC of 0.08 grams or more; or the person's ability to operate the vehicle is visibly impaired due to the consumption of alcoholic liquor, a controlled substance, or other intoxicating substance, or a combination of those.

Section 625(3) prohibits a person from operating a vehicle while the person is visibly impaired due to the consumption of alcoholic liquor, a controlled substance, or other intoxicating substance, or a combination of those.

Section 625(6) prohibits a person under the age of 21 from operating a vehicle if the person has any bodily alcohol content. "Any bodily alcohol content" means either of the following:

- A BAC of 0.02 grams or more but less than 0.08 grams per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine (or 0.02 grams or more but less than 0.10 grams per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine, beginning October 1, 2021).
- Any presence of alcohol within the person's body resulting from the consumption of alcoholic liquor, other than the consumption of alcoholic liquor as part of a generally recognized religious service or ceremony.

Section 625(8) prohibits a person from operating a vehicle if the person has in his or her body any amount of a Schedule 1 controlled substance under Section 7212 of the Public Health Code or a rule promulgated under Section 7212 or of a controlled substance described in Section 7214(a)(iv) of the Public Health Code.

Legislative Analyst: Stephen Jackson

## **FISCAL IMPACT**

The bill likely would not have a noticeable fiscal impact on local court systems. While the bill likely would result in additional expungement filings across the State, it is assumed these filings would not flood the local court systems with additional administrative costs and hearing requests. There are several fees associated with the expungement process (\$50 to the Michigan State Police (MSP) for a background check, \$10 to \$15 to MSP for fingerprints, \$10 to the Internet Criminal History Access Tool), but no filing fees that go to a Judiciary restricted fund. The bill likely would not have a fiscal impact on State government.

Fiscal Analyst: Michael Siracuse

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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.