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# SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

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**Bill No:** SB 698                      **Hearing Date:** April 25, 2017  
**Author:** Hill  
**Version:** April 17, 2017  
**Urgency:** No                              **Fiscal:** Yes  
**Consultant:** MK

**Subject:** *Driving Under the Influence: Alcohol and Marijuana*

## HISTORY

**Source:** Author

**Prior Legislation:** None

**Support:** Alcohol Justice; the Association of Deputy District Attorneys, the California Association of Code Enforcement Officers; California Association of DUI Treatment Programs; The California College and University Police Chiefs Association; California Council on Alcohol Problems; California District Attorney Association; The California Narcotic Officers Association; Crime Victims United of California; Los Angeles Deputy Sheriffs; The Los Angeles Police Protective League; The Los Angeles County Professional Peace Officers Association; Peace Officers Research Association of California; Riverside Sheriffs' Association

**Opposition:** American Civil Liberties Union; Drug Policy Alliance; California Attorneys for Criminal Justice; California Public Defenders Association; Southern California Coalition

## PURPOSE

*This bill provides that it is unlawful for a person who has between 0.04 percent and 0.07 percent, by weight, of alcohol in his or her blood and whose blood contains any controlled substance or 5 ng/ml or more of delta-9-tetrahydrocannabinol (THC) to drive a vehicle.*

*Existing law* prohibits drivers and passengers of motor vehicles from consuming any alcoholic beverage or possessing any open container of alcohol while on a highway. (Vehicle Code §§ 23221 and 23222)

*Existing law* allows police officers to request preliminary alcohol screening tests (breathalyzers) of drivers under 21 suspected of having a blood alcohol concentration (BAC) equal to or greater than 0.01%, or chemical lab screening of blood, breath, or urine if a screening device is not available. (Vehicle Code § 23136)

*Existing law* prohibits the operation of a vehicle while under the influence of any alcoholic beverage to drive a vehicle (Vehicle Code § 23152(a))

*Existing law* provides that it is unlawful to drive with a .08% or higher blood alcohol content. (Vehicle Code § 23152 (b))

*Existing law* provides that it is unlawful for a person under the influence of any drug to drive a vehicle. (Vehicle Code § 23152(f))

*Existing law* provides that it is unlawful for a person who is under the combined influence of any alcoholic beverage and drug to drive a vehicle. (Vehicle Code § 23152(g))

*Existing law* allows persons 21 or over to possess not more than 28.5 grams of marijuana and allows those individuals to smoke or ingest marijuana. (Health and Safety Code § 11362.1)

*This bill* provides that it is unlawful for a person who has between 0.04 percent and 0.07 percent, by weight, of alcohol in his or her blood and whose blood contains any controlled substance or 5 ng/ml or more of delta-9-tetrahydrocannabinol (THC) to drive a vehicle.

*This bill* provides that in a prosecution for the above it is a rebuttable presumption that the person had between 0.4% and 0.07% by weight, of alcohol, or 5 ng/ml of THC or a controlled substance in his or her blood at the time of driving the vehicle if the person had the substance in the specified amount in his or her blood at the time of performance of a chemical test within three hours after driving.

*This bill* provides that a first violation of this section is an infraction.

*This bill* provides that a second or subsequent violation of this section is a misdemeanor.

*This bill* provides that nothing in this section prohibits the prosecution under any other provision of the law.

## COMMENTS

### 1. Need for This Bill

According to the author:

Over the last 10 years DMV data is available, the two most recent years show that for the first time, drugged drivers and drug combined with alcohol drivers are killing more Californians than alcohol impaired drivers. In 2013, 892 people were killed by drugged drivers and drug plus alcohol drivers compared to 807 people who were killed by alcohol-only impaired drivers.

The percentage of traffic deaths in which at least one driver tested positive for drugs has nearly doubled over the last decade. The National Highway Traffic Safety Administration has tracked an upswing in the percentage of drivers testing positive for illegal drugs and prescription medications, according to federal data released to USA TODAY and interviews with leaders in the field. In 2015, 21% of the 31,166 fatal crashes in the U.S. involved at least one driver who tested positive for drugs after the incident — up from 12% in 2005, according to NHTSA.

According to the 2013-2014 NHTSA National Roadside Survey, 22.5 percent of weekend, nighttime drivers tested positive for illegal, prescription, or over-the-counter drugs that could cause driving impairment. More than 15 percent tested positive for illicit drugs, and more than 12 percent tested positive for THC (delta 9 tetrahydrocannabinol), which is a 4 percent increase from the 2007 survey. An additional 2009 NHTSA study tested fatally injured drivers and found that nationally 18 percent tested positive for at least one illicit, prescription, or over-the-counter drug. This is an increase from a 2005 NHTSA study that found that 13 percent of fatally injured drivers tested positive for at least one drug type. The study also found that 23 percent of California's 1,678 fatally injured drivers in 2009 tested positive for drugs.

In 2012, the California Office of Traffic Safety (OTS) released a study of weekend nighttime drivers that found more California drivers tested positive for marijuana than alcohol.

According to the AAA's May 2016 study, *Driving Under the Influence of Alcohol and Marijuana: Beliefs and Behaviors, United States, 2013-2015*, "A majority of drivers support reducing the BAC limit from 0.08 to 0.05 grams per deciliter and support having a per se law for marijuana."

## **2. Proposition 64 (Adult Use of Marijuana Act) was passed by the voters on November 8, 2016**

As a result of the passage of Proposition 64, adults, aged 21 years or older, are allowed to possess and use marijuana for recreational purposes. The measure created two new taxes, one levied on cultivation and the other on retail price. Revenue from the taxes will be spent on drug research, treatment, and enforcement, health and safety grants addressing marijuana, youth programs, and preventing environmental damage resulting from illegal marijuana production. Proposition 64 allows adults to possess up to an ounce of marijuana. Adults are also allowed to cultivate up to six marijuana plants inside their homes. Marijuana packaging is now required to provide the net weight, origin, age, and type of the product, as well as the milligram amount per serving of *tetrahydrocannabinol* and other *cannabinoids*. Driving under the influence of marijuana was illegal prior to the passage of Proposition 64 and the Proposition 64 did nothing to change that.

## **3. The Effect of Drugs on an Individual's Ability to Drive is Not Well Understood**

Research has established that there is a close relationship between blood alcohol concentration (BAC) level and impairment. Some effects are detectable at very low BACs (e.g., .02 grams per deciliter, or g/dL) and as BAC rises, the types and severity of impairment increase. (Drug Impaired Driving Understanding the Problem & Ways to Reduce It (2009), National Highway Transportation Safety Administration, pp. 2-3.) The behavioral effects of other drugs are not as well understood compared to the behavioral effects of alcohol. Certain generalizations can be made: high doses generally have a larger effect than small doses; well-learned tasks are less affected than novel tasks; and certain variables, such as prior exposure to a drug, can either reduce or accentuate expected effects, depending on circumstances. However, the ability to predict an individual's performance at a specific dosage of drugs other than alcohol is limited. Most psychoactive drugs are chemically complex molecules whose absorption, action, and elimination from the body are difficult to predict. Further, there are considerable differences

between individuals with regard to the rates with which these processes occur. (Drug Impaired Driving Understanding the Problem & Ways to Reduce It (2009), National Highway Transportation Safety Administration, pp. 2-3.) The presence of a drug in a person's blood sample might indicate a drug that was affecting the individual at the time the sample was taken, or it might indicate a drug that was consumed at some point in the past and was no longer affecting the individual at the time the sample was taken. The length of time that a drug or its metabolite is present in a given biological sample is often called its detection time. This may vary depending on the dose (amount), route of administration (injected, inhaled etc.) and elimination rate (how long it takes the body to get rid of the substance). The presence of a drug metabolite in a biological fluid may or may not reflect consumption of the drug recently enough to impair driving performance. (Drug Toxicology for Prosecutors, American Prosecutors Research Institute (2004), p. 8.) There are additional factors that complicate the determination of the effects on drugs on driving impairment. There are individual differences in absorption, distribution, and metabolism. Some individuals will show evidence of impairment at drug concentrations that are not associated with impairment in others. Wide ranges of drug concentrations in different individuals have been associated with equivalent levels of impairment. In certain instances drugs can be detected in the blood because of accumulation. Blood levels of some drugs or their metabolites may accumulate with repeated administrations if the time-course of elimination is insufficient. (Drug Impaired Driving Understanding the Problem & Ways to Reduce It (2009), National Highway Transportation Safety Administration, p. 3.) Because of these factors, specific drug concentration levels cannot be reliably equated with effects on driver performance.

#### **4. Current Study on Interaction of Marijuana and Driving**

The University of California, San Diego houses the Center for Medicinal Cannabis Research. AB 266 (Bonta), Chapter 689, Statutes of 2014, required the Bureau of Medical Cannabis Regulation to contract with the California Marijuana Research Program, known as the Center for Medicinal Cannabis Research, to develop a study that identifies the impact that cannabis has on motor skills. The Center for Medicinal Cannabis Research is currently engaged in that clinical study. The title of the study is "A Randomized, Controlled Trial of Cannabis in Healthy Volunteers Evaluating Simulated Driving, Field Performance Tests and Cannabinoid Levels." As part of the study, volunteers will inhale smoked cannabis with either 0% (placebo), 6.7%, or 12.6%  $\Delta$ 9-THC at the beginning of the day, and then complete driving simulations, iPad-based performance assessments, and bodily fluid draws (e.g., blood, saliva, breath) before the cannabis smoking and hourly over the subsequent 7 hours after cannabis smoking. (<http://www.cmcrc.ucsd.edu/index.php/2015-11-20-20-52-15/active-studies/62-ab266>) The purpose of the study is to determine (1) the relationship of the dose of  $\Delta$ 9-THC on driving performance and (2) the duration of driving impairment in terms of hours from initial use, (3) if saliva or expired air can serve as a useful substitute for blood sampling of  $\Delta$ 9-THC in judicial hearings and (4) if testing using an iPad can serve as a useful adjunct to the standardized field sobriety test in identifying acute impairment from cannabis. (Id.) Proposition 64 provides the University of California San Diego Center for Medicinal Cannabis Research will continue to receive \$2,000,000 annually for research on understanding the efficacy and adverse effects of marijuana.

## **5. Proposition 64 Provides Financial Resources for CHP to Study Drugged Driving, Including Marijuana**

Proposition 64 provides a couple of funding streams for CHP to address driving under the influence, including driving under the influence of marijuana. The source of the revenue streams is the money that will be generated by taxing marijuana (The Marijuana Tax Fund). One revenue stream is a fixed amount of \$3,000,000 a year for four years starting in fiscal year 2018-2019. That money is for CHP “to establish and adopt protocols to determine whether a driver is operating a vehicle while impaired, including impairment by the use of marijuana or marijuana products, and to establish and adopt protocols setting forth best practices to assist law enforcement agencies.” (Health and Saf. Code, § 34019, subd. (c).) The language of Proposition 64 allows CHP to use those funds to hire personnel to establish the protocols for driving under the influence. In addition, the department may make grants to public and private research institutions for the purpose of developing technology for determining when a driver is operating a vehicle while impaired, including impairment by the use of marijuana or marijuana products. (Health and Saf. Code, § 34019, subd. (c).) Proposition 64 provides a second funding stream to CHP from the Marijuana Tax Fund. The money generated by taxing marijuana will go to a variety of entities to ensure effective implementation of the Proposition 64 and to address policy concerns surrounding the use of marijuana. After the mandatory disbursements from the Marijuana Tax Fund are made each year, the remaining money will be disbursed to specified entities on a percentage basis. Of the remaining money, CHP will receive 20%. That money is provided to CHP for the following purposes:

- a) . . . for conducting training programs for detecting, testing and enforcing laws against driving under the influence of alcohol and other drugs, including driving under the influence of marijuana. The department may hire personnel to conduct the training programs specified in this subparagraph. (Health and Saf. Code, § 34018, subd. (f)(3)(A).)
- b) . . . to fund internal CHP programs and grants to qualified nonprofit organizations and local governments for education, prevention and enforcement of laws related to driving under the influence of alcohol and other drugs, including marijuana; programs that help enforce traffic laws, educate the public in traffic safety, provide varied and effective means of reducing fatalities, injuries and economic losses from collisions; and for the purchase of equipment related to enforcement of laws related to driving under the influence of alcohol and other drugs, including marijuana. (Health and Saf. Code, § 34018, subd. (f)(3)(B).)

## **6. Some Alcohol and Some Drugs**

This bill provides it is an infraction for a person who has between 0.04%-0.07% alcohol in his or her blood and whose blood contains any controlled substance or 5ng/ml or more of THC to drive a vehicle. A second offense would be a misdemeanor.

If a person blows less than a .08% on a breathalyzer, he or she would either have had to fail any sobriety tests given or law enforcement would have to have some other evidence of drug use in order to arrest a person and test his or her blood. If he or she fails the sobriety tests, then he or she may already be charged with a DUI under Vehicle Code Sections 23152 (a) or (f). If a person does not fail a sobriety test then should they be guilty of an infraction in light of the fact there is no clear standard for what constitutes intoxication for drugs? And this bill requires any

amount of a controlled substance, what about controlled substances that remain longer in a person's blood stream, should there be an infraction if there is was not enough signs of intoxication to merit charging the person with a DUI?

Is this bill timely or should it wait until we have more information from the UCSD study and the CHP recommendations.

**-- END --**