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## SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

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**Bill No:** AB 2058                      **Hearing Date:** June 26, 2018  
**Author:** Chau  
**Version:** May 25, 2018  
**Urgency:** No                                      **Fiscal:** No  
**Consultant:** MK

**Subject:** *Vehicles: Driving Under the Influence: Cannabis*

### HISTORY

Source: Author

Prior Legislation: AB 2552(Torres) Chapter 753, Stats. 2012

Support: AAA Clubs; Auto Club of Southern California; California Chapter of the American College of Emergency Physicians; California District Attorneys Association; California Police Chiefs Association

Opposition: California Public Defenders Association

Assembly Floor Vote: 64 - 4

### PURPOSE

*The purpose of this bill is to separate out a DUI with cannabis or alcohol and cannabis from other types of DUI.*

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

*Existing law* provides it is unlawful for any person who has 0.08 percent or more, by weight, of alcohol in his or her blood to drive a vehicle. For purposes of this article and Section 34501.16, percent, by weight, of alcohol in a person's blood is based upon grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath. In any prosecution under this subdivision, it is a rebuttable presumption that the person had 0.08 percent or more, by weight, of alcohol in his or her blood at the time of driving the vehicle if the person had 0.08 percent or more, by weight, of alcohol in his or her blood at the time of the performance of a chemical test within three hours after the driving. (Vehicle Code § 23152(b).)

*Existing law* provides that it is unlawful for any person who is addicted to the use of any drug to drive a vehicle. This subdivision shall not apply to a person who is participating in a narcotic treatment program approved pursuant to Article 3 (commencing with Section 11875) of Chapter 1 of Part 3 of Division 10.5 of the Health and Safety Code. (Vehicle Code § 23152(c).)

*Existing law* provides that it is unlawful for any person who has 0.04 percent or more, by weight, of alcohol in his or her blood to drive a commercial motor vehicle, as defined in Section 15210. In any prosecution under this subdivision, it is a rebuttable presumption that the person had 0.04 percent or more, by weight, of alcohol in his or her blood at the time of driving the vehicle if the person had 0.04 percent or more, by weight, of alcohol in his or her blood at the time of the performance of a chemical test within three hours after the driving. (Vehicle Code § 23152(d).)

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

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

*This bill* provides that it is unlawful for any person who is under the combined influence of any alcoholic beverage and drug *other than cannabis* to drive a vehicle.

*This bill* provides that it is unlawful for a person while under the influence of cannabis or any cannabis product to drive a vehicle.

*This bill* provides that it is unlawful for person who is under the combined influence of any alcoholic beverage and cannabis or any cannabis product or derivative to drive a vehicle.

*Existing law* makes it unlawful for any person to cause an injury while driving under the influence. (Vehicle Code § 23153 (a))

*Existing law* provides it is unlawful for any person who has 0.08 percent or more, by weight, of alcohol in his or her blood to cause an accident while driving a vehicle. (Vehicle Code § 23153 (b))

*Existing law* provides it is unlawful for any person driving a commercial vehicle who has 0.04 percent or more, by weight, of alcohol in his or her blood to cause an accident while driving a vehicle. (Vehicle Code § 23153 (b))

*Existing law* provides that it is unlawful for any person who is under the influence of any drug to drive a vehicle and cause an injury. (Vehicle Code § 23153(f).)

*Existing law* provides that it is unlawful for any person who is under the combined influence of any alcoholic beverage and drug to drive a vehicle and cause an injury. (Vehicle Code § 23153(g).)

*This bill* provides that it is unlawful for any person who is under the combined influence of any alcoholic beverage and drug *other than cannabis* to drive a vehicle and cause an injury.

*This bill* provides that it is unlawful for a person while under the influence of cannabis or any cannabis product to drive a vehicle and cause an injury.

*This bill* provides that it is unlawful for person who is under the combined influence of any alcoholic beverage and cannabis or any cannabis product or derivative to drive a vehicle and cause an injury.

## COMMENTS

### 1. Need for This Bill

According to the author:

Currently, as the state transitions in to the legalized cannabis market, there is no way to determine how many cannabis DUI's occur annually. This is because existing DUI code only allows for someone to be charged with driving under the influence of "drugs", without specifying which drug the individual is being charged for.

With the legalization of cannabis rolling out in our state recently, it is reasonable to assume that more individuals will be using cannabis, and operating a car while impaired, however, there is currently no way for the state to gauge how serious of a problem cannabis drugged driving is.

In 2012, Colorado and Washington became the first states in the nation to fully legalize cannabis for recreational purposes. Since that time, these two states have shared a very similar experience as it pertains to drugged driving involving cannabis. According to the Denver Post, the number of drivers involved in fatal crashes who tested positive for cannabis in Colorado jumped from 47 in 2013 to 115 in 2016- a 145% increase. Similarly, according to the Washington State Patrol, the number of drivers involved in fatal crashes who tested for cannabis in Washington rose from 64 in 2013 to 116 in 2017.

While the rise in the number of drivers involved in fatal accidents who tested positive for cannabis is certainly shocking, our state currently has no way to estimate the total number of drivers who have been cited for cannabis drugged driving overall, leaving a very important statistical gap as we debate cannabis drugged driving, and the policies we enact around it.

Additionally, the National Highway Traffic Safety Administration noted in their July 2017 report to congress on cannabis impaired driving that "there is little State level data about the prevalence of use of marijuana by drivers being collected. As States continue to change their laws regarding marijuana use in general and as it relates to driving, this lack of State level data prevents evaluation of the effect of policy changes on driver behavior, including willingness to drive while under the influence of marijuana, as well as the effect of marijuana on crashes, deaths and injuries".

By establishing cannabis as its own charging subsection within DUI code we will be taking a thoughtful and statistics driven approach to analyze and enact policies around the issue of cannabis drugged driving.

## 2. Separate Charge for Cannabis

Under existing law a person charge with a DUI or DUI with injury can be charged with a DUI, a DUI with .08% on drugs as a DUI or a DUI with combined drugs and alcohol.

This bill would recast the drug and alcohol and drug provisions to be:

- DUI with drug not cannabis;
- DUI with drug not cannabis and alcohol;
- DUI with cannabis;
- DUI with cannabis and alcohol.

## 3. Separating out Cannabis

Unlike alcohol, there is no scientific level of THC that shows impairment in most people. Furthermore, THC can be found in a person's blood for up to 30 days. (see for example: <https://www.npr.org/sections/health-shots/2017/07/30/523004450/scientists-still-seek-a-reliable-dui-test-for-marijuana>)

In order to get more information on how many people are DUI while on cannabis, this bill separates out cannabis and cannabis and alcohol combination from other drugs or other drugs and alcohol.

If we start separating out types of drugs will others follow cannabis? What will this mean for DMV and the programing changes they need to make when we change this section.

It may make sense to separate a person who is convicted of DUI and the only thing in his or her system is cannabis because that can tell us how many people are impaired on cannabis, but it is not clear what helpful information will be garnered when a person is convicted of an alcohol DUI and they have cannabis in their system, since the cannabis could be weeks old and not contributed to the actual impaired driving.

The Committee may wish to consider amending this bill so that the combined alcohol and drug section is not changed and the cannabis only section is the only one added so we can have valid data on cannabis intoxication.

## 4. Other Sections Impacted

The addition of these sections in this bill will impact other sections relating to DUI's and the author should make appropriate cross reference changes to the sections. Vehicle Code Section 15300 and 15302 which deal with commercial driving privilege disqualification and Vehicle Code § 23575.3 on ignition interlock to make sure it applies to the new combined alcohol and cannabis sections.