



**House  
Legislative  
Analysis  
Section**

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## **DETER DRUNK BOATING**

**Senate Bill 327 (Substitute H-4)  
First Analysis (11-5-92)**

**Sponsor: Sen. William Van Regenmorter  
Senate Committee: Judiciary  
House Committee: Judiciary**

### ***THE APPARENT PROBLEM:***

Michigan's Marine Safety Act (Public Act 303 of 1967) prohibits "drunk boating" (operating boats while under the influence of liquor or controlled substances), and was amended in 1982 -- at the time of the last extensive revision of state laws on drunk driving-- to introduce language similar to that in the Michigan Vehicle Code providing for arrests, gathering of evidence, prosecution, and penalties in drunk driving cases. (Though, since boats are registered, not licensed, the 1982 revisions to the Marine Safety Act omitted parallels to the vehicle code's procedures for license suspensions and revocations.)

A number of problems remained with the "drunk boating" provisions of the act, however. Since boats are registered, not licensed, license suspensions or revocations cannot be used to deter drunk boating. There are problems, too, in identifying when someone is drunk boating, since there are no marked lanes for drunk boaters to weave across, while speeding or erratic operation of a boat don't necessarily mean drunk boating. Currently, moreover, marine safety officers cannot require preliminary breath tests on the water, and must attempt to judge whether or not a boat operator is drunk by such conventional (but sometimes misleading) signs as slurred speech, a "glazed" look in the suspect's eyes, the smell of liquor on the suspect's breath, and so forth. Unlike automobile accidents on land, where passersby can call for help when happening on the scene of an accident, when there is a boating accident, the victims drown -- "passersby" can't just wait beside injured victims until help comes. There also are identification problems, even when boat operators are stopped and challenged -- often boaters do not have identification with them (sometimes due to the fact, for example, that boaters often may be wearing swimwear that has no place for carrying printed identification), and, reportedly, boaters often refuse to identify themselves or give false identification

which cannot be readily checked for its accuracy. Finally, drunk boating cases are not seen as being as serious as drunk driving cases, and even when there is a conviction, a meaningless six month penalty is imposed ("meaningless," because by the time the case is tried and a conviction is handed down, the six months suspension of boating privileges may well fall during the winter when the convicted boater wouldn't be on the water anyway). Finally, someone convicted of drunk boating in one jurisdiction can travel to one of the state's many other waterways or lakes and even if again convicted of drunk boating can claim the conviction to be a first offense. Thus, there is no good way to track the repeat -- and the more dangerous -- offenders.

When further revisions to the drunk driving provisions of the Michigan Vehicle Code were enacted in 1991, some people believed that analogous revisions should be made to the drunk boating provisions of the Marine Safety Act. Legislation has been introduced which would do just that.

### ***THE CONTENT OF THE BILL:***

The bill would make a number of significant changes to the Marine Safety Act (Public Act 303 of 1967), modeling the changes on the drunk driving revisions made earlier this session to the Michigan Vehicle Code by Public Acts 93, 95, 98, and 99 of 1991. In brief, the bill would:

- \* Create a central file of boating violations accessible through the Law Enforcement Information Network (LEIN);
- \* allow marine safety officers to give preliminary breath tests (PBTs) on the water (and impose a \$100 civil fine for refusal to take the test);
- \* increase the penalties for convictions;

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- \* impose penalties for giving false or misleading identification on the water;
- \* add penalties for boating with a suspended registration; and
- \* create two new felonies for causing death or serious injury.

A more detailed description of the bill follows.

Central file, court records. The secretary of state would be required to set up and keep a central file with the names of everyone convicted of an offense under the act (or who failed to comply with an order or judgement, or against whom an order was entered, under the act). Certified copies of orders, records, or papers kept in this central file would be admissible in evidence in court and would be prima facie proof of the facts stated in the original.

Municipal judges or court clerks would have to keep full records of cases in which someone was charged with or cited for a violation of the act (or of a substantially similar local ordinance). The judge or court clerk would have to prepare and forward to the secretary of state abstracts of these cases within 14 days after a conviction (or "forfeiture of bail, entry of a civil infraction determination, or default judgment upon a charge of, or citation for, violating" the act or a similar local ordinance). The abstract would be on a form provided by the secretary of state and would have to include certain information specified by the bill. Cities or villages authorized to accept money in settlement for violations of local ordinances similar to the Marine Safety Act would have to send a full report of such cases to the secretary of state on a form provided by the Department of State.

Everyone required to forward abstracts to the secretary of state would periodically have to certify, on forms provided by the department, that they had complied with this requirement. Failure, refusal, or neglect to comply with these reporting and certification requirements would constitute misconduct in office and would be grounds for removal from office.

The secretary of state would have to keep these abstracts at his or her main office and allow public inspection during regular business hours. Each abstract would have to be available to law enforcement officers through the Law Enforcement

Information Network (LEIN). Only violations that could result in an order suspending boating privileges would be submitted to the secretary of state and entered into the central file.

The secretary of state would have to inform courts of violations that were the basis of orders suspending boating privileges. Courts would have to inform the secretary of state of reversals of convictions (or civil infraction determinations), and he or she would have to enter the reversal in the proper book or index in connection with the record of the conviction or civil infraction determination.

The secretary of state could let cities and villages to modify reporting requirements if the change made collection and use of the records cheaper and more efficient.

Criminal offenses and penalties. Currently, the Marine Safety Act prohibits anyone under the influence of intoxicating liquor or a controlled substance (or both) from operating a boat on state waters. It also prohibits boat owners (or those in charge of boats) from knowingly letting someone operate their boat while drunk or impaired. First violations are misdemeanors punishable by imprisonment for up to 90 days, a fine of \$100 to \$500, or both, together with the costs of the prosecution. Second convictions also are misdemeanors, punishable by imprisonment for up to a year, a fine of up to \$1,000, or both. A third or subsequent conviction within 10 years is a felony.

The bill would distinguish seven criminal offenses: three drunk boating misdemeanors (one of which would become a felony under certain circumstances), a false identification misdemeanor, a misdemeanor for boating with suspended privileges, and two felonies (drunk boating involving death or serious injury). Attempted violations would be treated as though they had been completed.

(1) A first drunk boating (operating a boat under the influence of intoxicating liquor [OUIL] or with a blood alcohol content [BAC] of 0.10 percent) conviction would be a misdemeanor punished by (a) community service for up to 45 days, (b) imprisonment for up to 90 days, and/or (c) a fine of \$100 to \$500. A second conviction within seven years of a prior conviction would result in both a fine of \$200 to \$1,000 and either (a) community service of 10 to 90 days or (b) imprisonment up to

one year (which could not be suspended). A conviction within ten years of two or more prior convictions would be a felony punished by imprisonment for one to five years, a fine of \$500 to \$5,000, or both. In all these cases, the court could order the drunk boater to pay prosecution costs.

(2) Someone who owned or was in charge of a boat and who knowingly let someone operate the boat while drunk or impaired would be guilty of a misdemeanor punishable by imprisonment for up to 90 days, a fine of \$100 to \$500, or both.

(3) Operating a boat while visibly impaired (OWI) "due to the consumption of an intoxicating liquor or a controlled substance, or both" also would be a misdemeanor. A first conviction would be punishable by community service for up to 45 days, imprisonment for not more than 90 days, and/or a fine of up to \$300. A second conviction within seven years of a single prior conviction, or a conviction within ten years of two or more prior convictions, would carry a fine of \$200 to \$1,000 and either community service for 10 to 90 days (with possible imprisonment for up to one year) or imprisonment for up to one year (with possible community service for up to 90 days).

(4) Someone who was stopped for a violation of the act and who gave the law enforcement officer false or misleading identification would be guilty of a misdemeanor.

(5) Operating a boat while having one's boating privileges suspended would be a misdemeanor. A first offense would be punishable by imprisonment for up to 90 days, a fine of up to \$500, or both. Second and subsequent violations would be punishable by imprisonment for up to one year, a fine of up to \$1,000 or both.

(6) Drunk boating that caused a fatality would be a felony punishable by up to 15 years in prison and/or a fine of \$2,500 to \$10,000 plus costs of prosecution.

(7) Drunk boating that caused an incapacitating injury would be a felony punishable by up to five years in prison and/or a fine of \$1,000 to \$5,000 plus prosecution costs.

Boating privilege suspensions. Suspension of boating privileges could be done by court order or on orders issued by the secretary of state.

When someone was convicted of drunk boating, whether a misdemeanor or felony, the court would consider his or her prior convictions before ordering boating privileges suspended. The court also would order the defendant to undergo screening and assessment to decide whether or not he or she should be sentenced to a substance abuse rehabilitation program (to be paid for by the defendant). Depending on the nature of the offense and the number of prior convictions, the court would issue an order suspending boating privileges for periods of from six months to permanently ("without an expiration date").

The bill also would prescribe a complex schedule of six-month to two-year boating privilege suspension orders issued by the secretary of state based on a boater having certain convictions within a seven-year period.

Refusal to take a drug test, failure to request a hearing on such a refusal, or failure to prevail at a drug test refusal would result in a secretary of state-ordered suspension of boating privileges in Michigan for at least six months (or, for a second or subsequent refusal within seven years, for one year).

Boating with suspended privileges. Upon conviction of boating with suspended privileges, the boat's certificate of number would be confiscated and its registration numbers canceled. The boat also would be impounded for 30 to 120 days, and the period for which boating privileges was suspended would be doubled. Owners of impounded boats would be liable for the costs of removing and storing it, whether or not it was returned. In any case, an impounded boat would not be returned until the removal and storage costs had been paid. An impounded boat would be considered abandoned if it wasn't redeemed or returned after the period of impoundment.

Preliminary breath tests (PBTs). An officer who had been trained to administer a preliminary chemical breath test could require a suspect to take a PBT, and arrest the suspect on the basis of the test results. Someone who refused to take such a test would be responsible for a civil infraction and subject to a fine of up to \$100. Results of preliminary breath tests would be admissible in criminal prosecutions under the bill or in an administrative hearing solely to help decide challenges to the validity of arrests. Someone who

took a preliminary breath test would not be excused from the requirements for further drug testing.

Implied consent and drug testing. Unless the person had hemophilia or diabetes or was taking a prescription anticoagulant, someone operating a boat would be considered to have given consent to chemical tests of his or her blood for the presence of alcohol or other drugs if he or she were arrested:

- \* for certain "drunk boating" offenses (OUIL, OWI, and the two felony offenses involving death or serious injury); or

- \* for negligent homicide, manslaughter, or murder resulting from operating a boat and the arresting officer had reasonable grounds to believe the person was operating the boat while impaired or under the influence of alcohol or drugs.

The amount of drugs shown by test results would be admissible into evidence in any civil or criminal case. Medical facilities or providers who conduct drug tests would have to reveal the test results at the request of prosecuting attorneys, and compliance with lawful disclosure would not make the facility or provider criminally or civilly liable. Blood alcohol levels would be the same as in the Michigan Vehicle Code: 0.07 percent BAC or less would not indicate impairment or intoxication; more than 0.07 percent but less than 0.10 percent would indicate impairment; more than 0.10 percent would indicate intoxication.

Refusal of drug testing. Someone who refused a drug test could not be tested except under court order (which the arresting officer could request). When someone refused a drug test offered under the bill's provisions, the officer would immediately forward a written report to the secretary of state on a form provided by the department. The refusal would be admissible in criminal prosecutions only in order to show that a test was offered to the defendant, but not as evidence for his or her innocence or guilt.

Drug test refusal hearings. Someone who refused drug testing would have 14 days to request an administrative hearing. If a hearing were requested, the timetable and procedures would be similar to that in the Motor Vehicle Code: Notice of the hearing would have to be mailed to the person requesting the hearing and the officer filing the report (and, upon request, to the prosecuting attorney of the county of arrest) not less than five days before the hearing. Not more than one

adjournment (maximum length of 14 days) could be granted to a party. The hearing would have to be scheduled within 45 days after arrest and finally adjudicated within 77 days after arrest. Delays attributable to the unavailability of a defendant, witness, or evidence would be allowed, as would be delays due to interlocutory appeal or "exceptional circumstances," but not delays caused by docket congestion. The bill also would make provisions for appealing suspensions of boating privileges.

Administrative order processing fees. An order suspending or restricting boating privileges would not expire until a \$125 administrative order processing fee were paid to the secretary of state. Part of this fee would be deposited into two funds created under last year's Motor Vehicle Code drunk driver revisions. Ten dollars would go to the Drunk Driving Prevention Equipment and Training Fund, thirty dollars would go to the Drunk Driving Caseflow Assistance Fund, and the remainder would go to the Department of State to administer orders issued under the bill.

Other provisions. An officer making an arrest under the bill would have to take measures to assure that the boat and its occupants were safely returned to shore.

If, within 60 days after a citation for a civil infraction no charges were brought, the civil infraction would be void and any money paid for fines, costs, or otherwise would be returned (upon application from the person cited).

### ***HOUSE COMMITTEE ACTION:***

The House Judiciary Committee substituted the Senate-passed version of the bill, basically amending the Marine Safety Act in ways paralleling the changes made earlier this session to the Motor Vehicle Code by the "drunk driving package" (enrolled House Bills 4827 and 4828 and enrolled Senate Bills 314 and 315). The House substitute (H-4) would amend different sections of the Marine Safety Act (sections 161 and 162) than the Senate-passed version (which would have amended sections 73 and 73a), as well as add 27 new sections and repeal the five sections (73, 73a, 73b, 73c, and 73d) of the act that currently govern drunk boating.

### ***FISCAL IMPLICATIONS:***

Fiscal information is not available. (11-2-92)



**ARGUMENTS:*****For:***

According to the National Transportation Safety Board, recreational boating is second only to highway transportation in the number of fatalities that happen every year, with alcohol involved in at least half of all boating accidents. According to the Michigan Department of Natural Resources, in 1989 there were 461 boating accidents, resulting in 246 injuries and 35 deaths. The proposed changes in the Marine Safety Act would significantly improve the ability of law enforcement officers to arrest, and prosecutors to convict, drunk boaters. Allowing breathalyzer tests "on the water" would help officers identify when a boater was drunk, and making false identification a misdemeanor would cut down on the number of boaters who refuse to identify themselves or who give obviously false identifications. The central file would allow enforcement officials and courts to track repeat offenders, while imposing penalties for boating with suspended privileges will help tackle this problem. Finally, increasing the penalties for convictions and adding new criminal penalties for violations resulting in death or serious injury will help everyone to take these crimes more seriously and encourage prosecutors to prosecute these crimes.

**POSITIONS:**

The Department of State supports the bill. (11-2-92)

The Michigan Sheriffs' Association supports the bill. (11-4-92)