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## KIDS MUST WEAR LIFE JACKETS

House Bill 4738 (Substitute H-3)  
First Analysis (7-7-93)

Sponsor: Rep. Tracey Yokich  
Committee: Tourism & Recreation

### *THE APPARENT PROBLEM:*

Given Michigan's proximity to the Great Lakes and its abundance of inland lakes and streams, it stands to reason that this state has more registered recreational watercraft than any other state in the country. The popularity of boating, however, carries with it certain dangers, such as the congestion of waterways, the irresponsible operation of vessels (especially when liquor or drugs are used), and human disregard for the basic rules of safety while in or near water. For instance, many who boat or participate in other water activities such as waterskiing reportedly often fail to wear life jackets, otherwise known as "personal flotation devices" (PFDs). Even though current federal and state administrative rules require that all boats over 16 feet in length have on board a U.S. Coast Guard-approved PFD for each person aboard (as well as at least one "throwable" flotation device), nothing in Michigan or federal law requires that they actually be worn. Tragically, U.S. Coast Guard statistics show that more than 80 percent of the people who have died in boating accidents were not wearing a life preserver. Though adults may freely choose not to wear a PFD while in a boat or while being towed behind one, it seems particularly careless when they fail to ensure that children aboard a vessel or being pulled behind one are not doing so. Just last summer, for instance, an 18-month-old child was presumed to have drowned during a family fishing trip in Saginaw Bay after the child, who apparently saw his parents in the water after his mother slipped off the boat and his father jumped in to save her, crawled off the boat. As the woman reportedly was a poor swimmer, her husband had to struggle to hold on both to her and their child while keeping them all afloat, but eventually lost the child. No one was wearing a life jacket. A number of states currently require children under certain ages while in a vessel, as well as those being pulled behind on water skis and similar devices, to wear Coast Guard-approved PFDs, and some people believe Michigan should adopt a similar law.

### *THE CONTENT OF THE BILL:*

The bill would amend the Marine Safety Act to prohibit a person from operating a vessel on state waters unless every child in an open deck on board who was less than seven years old was wearing a "type I or type II personal flotation device," as described by administrative rule. The requirement to ensure a child of this age was wearing a proper flotation jacket also would apply to a parent or guardian of a child this age who accompanied him or her on board a vessel.

The act currently prohibits someone from operating a boat to tow someone else on water skis, a water sled or a similar device unless certain conditions are met (a "competent observer" is on board, a special rear-view mirror is used, etc.). (These provisions, however, currently do not apply to vessels used by ski schools, those used in ski tournaments, or to motorboats less than 16 feet long "actually operated" by the person being towed and incapable of carrying the operator in or on the boat.) The bill would add to these requirements that anyone who was less than 18 years old who was being towed or assisted by the boat would have to be wearing an authorized personal flotation device (which would include a type III device). Also, instead of the requirement to have on board in towing situations a "competent observer" in addition to the driver, the bill would require a towing boat to have an additional person on board who was "capable of rendering assistance."

Someone who violated any of these provisions (including the requirements of current law relating to boats towing persons) would be guilty of a misdemeanor and could be imprisoned for up to 90 days, fined at least \$100 but not more than \$500, or both, and be required to pay the costs of prosecution.

MCL 281.62a

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**FISCAL IMPLICATIONS:**

The House Fiscal Agency says the bill would have minimal fiscal implications to the state and local governments that would depend on the number of violations that occurred under the bill and the amount of fines that were imposed for them. (7-2-93)

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

According to data compiled by the U.S. Coast Guard, of the hundreds of deaths caused by boating accidents each year nationwide, many could be prevented if every person riding in or being towed by a boat took the simple step of securing themselves in a Coast Guard-approved life jacket. Both federal and state rules currently require all boats over 16 feet long to carry one personal flotation device for every person aboard, plus an additional throwable device, but nothing in either federal or state law requires everyone in the boat to wear a PFD. The bill would require an adult, parent or guardian operating or otherwise in charge of a boat, much the same as they are required by law to ensure children of certain ages are in a child-restraint seat or wearing a seat belt in a motor vehicle, to ensure that each child age six or under was wearing either a type I or type II PFD. In addition, someone driving a boat that was towing someone else behind on water skis or similar devices would be responsible to ensure that the person in tow, if he or she were age 17 or under, was wearing either a type I, type II or type III PFD. While adults may feel it is their right to choose not to wear a life preserver while boating or participating in other water activities, perhaps because they know how to swim or simply feel it is a bother to do so, taking such a cavalier attitude on the issue for children could endanger their lives. Young children simply cannot be expected to know how to react if a situation should suddenly occur where they find themselves in deep, perhaps rough, water. In many cases, even older people are not able to act quickly enough to secure themselves in a life jacket if they should suddenly find themselves in the water, but with children the fear of dealing with an emergency situation can be overwhelming. Under the bill, adults or parents could be subject to up to a \$500 fine, imprisonment or both, and be required to pay the costs of prosecution, if they were found in violation of the bill's provisions.

**Against:**

Most of the 22 states that currently require PFDs to be worn by children on boats apply this mandate to children older than six, usually 12-year-olds and younger. (Thirteen states have 12-and-under requirements, while five others mandate it for children in the nine- to ten-year-old age range.) In fact, many national boating organizations as well as the National Transportation Safety Board encourage states to adopt the 12-and-under standard--partly because this age is recommended by the American Academy of Pediatrics as being more appropriate considering the time it takes children up to this age to react in a life-threatening situation; but also to ensure uniformity among all the states. It seems that the second of these concerns is especially pertinent to this issue in Michigan as the overlap of jurisdictions among Great Lakes waters could make someone from a nearby state boating in Michigan waters subject to the penalties without having been informed of the law. (Apparently, of the states with borders on Great Lakes waters, New York has an 11-and-under law, Ohio an under-ten law, and Pennsylvania an under-nine law; only water and jet skiers must wear PFDs in Wisconsin; only jet skiers must wear them in Minnesota; while neither Indiana nor Illinois impose any requirements for PFDs to be worn.) Imposing a 12-and-under requirement in Michigan makes the most sense, however, when one considers that a person cannot operate a boat over 16 feet long here unless he or she is at least 12 years old and has passed a boating safety course (or is at least 16 without the course). If the state is to require PFDs to be worn by children at all, it ought to require this of all those who are probably still too immature to go on a boat without the security of wearing one.

**Against:**

The amount a person could be fined for violating the bill's provisions (\$500) is much too high. Also, subjecting an adult/parent/guardian who violated the bill's provisions to the possibility of serving a jail term (up to 90 days) seems extremely harsh. Senate Bill 684, one of a package of bills that would overhaul the Marine Safety Act, would impose similar requirements for children and adults in boating situations (except that it would apply only to children five years old and younger), but violators would be guilty of a civil infraction, could be fined up to \$100, and would not be subject to jail terms.

***Against:***

Though it seems reasonable to require a child under a certain age, whether in a boat or being towed behind one, to wear a PFD and to hold adults, parents or guardians responsible for ensuring that such a requirement was met, a number of arguments can be made against specific provisions of the bill, including the following:

\* The bill specifies that children six and under would have to be wearing either a type I or type II PFD while riding in a boat, but would require children 17 and under being towed by a boat to wear a type I, type II or type III PFD. Apparently, type I and II PFDs are more likely to keep a person's head above water if they're knocked unconscious, which could keep them from drowning. It seems inconsistent to require the more buoyant devices to be worn by younger children in boats, but allow the less buoyant type III PFD to be worn by children (albeit probably older ones) being towed behind a boat. A young person being pulled in the open water would seem to be at greater risk of being knocked unconscious if, for instance, he or she accidentally hit a submerged object or perhaps collided with another skier. On the other hand, it should be noted that a type III PFD is Coast Guard-approved to be safe for most boating conditions, and not permitting this type of life jacket to fulfill the bill's criteria for children six and under riding in a boat would be a deviation from federal standards.

\* Under the bill, an adult aboard a vessel would have to ensure that children six and under riding on the boat or those 17 and under who were being towed behind it were wearing an appropriate PFD, even though situations could arise where no "adult" was actually present aboard a boat. Currently under the Marine Safety Act, someone 12 through 15 years of age may operate any size motorboat as long as he or she has passed a boating safety course (and has the certificate of completion in his or her possession) and someone 16 years of age or older is aboard the vessel. If the bill became law, would a 16-year-old who was qualified to be in charge of a boat be held responsible as an "adult" if a young child aboard was not wearing a PFD, or if someone about the same age or younger (or perhaps one year older!) being towed behind were not doing so? Or would the 16-year-old's parent(s)/guardian(s) be responsible and be subject to penalties if a violation occurred, whether or not they were aware that their child was using the family boat and those aboard

were violating the bill's provisions? To be consistent with current law regarding the operation of boats by minors, the bill should take one of two approaches: It should either 1) require a PFD to be worn by someone in tow who was 15 years old and under and specify that, for the bill's purposes, an "adult" would mean someone who was at least 16 years old who was operating or otherwise in charge of the boat; or 2) keep the 17-and-under provision for wearing a PFD while in tow as proposed in the current version of the bill, and define an adult as someone who was at least 18 years old while revising other sections of the act to prohibit someone who was under 18 from operating or being in charge of a vessel.

\* The bill's provisions requiring children six and under to wear a PFD would apply even to those who merely spent time aboard their boat while it was docked, as is often done by those who own larger boats that are harbored in inland lakes that connect to one of the Great Lakes. Although this provision would apply only when children were "above deck," it essentially would hinder them from enjoying themselves, perhaps to bask in the sun, while above deck. Also, a child could technically be in violation of this provision simply upon entering the boat from the dock, where a life jacket presumably would not have to be worn. A similar law in at least one other state (Mississippi) specifies that the requirement to wear a PFD applies only when the vessel "is underway."

\* The Marine Safety Act currently provides that when a person is being towed behind a boat, another person must be in it besides the driver who is "considered competent [to] render assistance if necessary." The bill would revise this somewhat vague requirement to say that a spotter would have to be aboard who was "capable of rendering assistance," but fails to define what this would mean. The bill should specify the type of person (i.e., of what age, experience, etc.) who would be considered qualified to render assistance in a boat towing someone behind. (Senate Bill 685, one of the five-bill package that would extensively revise the act, would define a "competent person" as someone who could render assistance if necessary, and who was either 16 years of age or older or was 12 through 15 years of age and had been issued a boating safety certificate.)

***Against:***

Changes made to the Marine Safety Act such as those proposed in the bill should be done carefully and in such a way that they would fit into an extensive overhaul of the act that some people believe is needed. If nothing else, the bill at least should be tie-barred to Senate Bills 683-687, which would substantially revise much of the act.

***POSITIONS:***

The Department of Natural Resources supports the bill. (7-1-93)

Balistreri Consulting, Inc., a firm in Zephyrhills, Florida, that designs and manufactures PFDs and other marine equipment, supports the bill. (7-1-93)

The National Marine Manufacturers Association supports the bill. (7-2-93)

The following groups support the bill's concept, but feel the requirement to wear a PFD in a boat should apply to children 12 years old and younger:

- \* The National PFD Manufacturers Association (7-1-93)
- \* The National Association of State Boating Law Administrators (7-1-93)
- \* The National Water Safety Congress (7-6-93)

The National Transportation Safety Board supports the bill's concept, but feels uniformity should exist between states regarding the requirement for children to wear PFDs while boating. The board notes that all states currently are encouraged to adopt this requirement for children 12 years old and younger. (7-2-93)

The Michigan Boating Industries Association supports the bill's concept, but feels the requirement to wear a PFD in a boat should apply to children five years old and younger--such as proposed in Senate Bill 684. (7-6-93)

The Michigan Water Ski Association strongly opposes the bill. (6-29-93)