



Senate Fiscal Agency
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BILL  ANALYSIS

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Senate Bill 816 (Substitute S-4 as passed by the Senate)

(as enrolled)

Senate Bill 817 (Substitute S-1 as passed by the Senate)

(as enrolled)

Sponsor: Senator Wayne Kuipers (S.B. 816)

Senator Jud Gilbert, II (S.B. 817)

Committee: Judiciary

Date Completed: 4-25-06

RATIONALE

Rip currents, which are formed when water is pushed up the slope of a shore and gravity pulls the water back from shore, have been blamed for numerous drowning deaths at Lake Michigan beaches in recent years. Reportedly, approximately 30 drownings were related to rip currents in that lake in 2002 and 2003, and seven people drowned in one day in 2003 along a three-mile stretch of beach in Berrien County.

Shortly after the death of a Grand Haven teen in 2003, concerned citizens and community organizations formed the Great Lakes Beach and Pier Safety Task Force. The task force provides educational materials about surviving rip currents and other water-related conditions, and places water safety equipment such as life rings on beaches and piers. Evidently, when the Grand Haven boy was caught in a rip current, a bystander had to run a great distance across a sandy beach to locate a life ring and, by the time he returned to the shore, the swimmer had died. The task force has worked to ensure that life-saving equipment is more accessible, and 15 brackets now hold life rings and ropes on the Grand Haven pier, while five posts holding rings, ropes, and signs with information about how to escape a rip current now line the beach within 100 feet of the water's edge.

According to a task force representative, a life ring was stolen just days after this equipment initially was placed, and a total of 22 life rings were stolen in 2005. Some

people believe that there should be a specific criminal prohibition against unlawfully taking or tampering with marine safety equipment, and that severe penalties should apply if that action results in a person's death or serious injury.

CONTENT

Senate Bills 816 (S-4) and 817 (S-1) would amend the Michigan Penal Code and the Code of Criminal Procedure, respectively, to prohibit and provide criminal penalties for unlawfully tampering with, taking, or removing a publicly owned "marine safety device"; and to include felony violations in the sentencing guidelines.

Senate Bill 816 (S-4) would define "marine safety device" as a device designed or intended to be used to rescue individuals in marine emergency situations, including life preservers, safety harnesses, ladders, lines, and throw rings.

Senate Bill 817 (S-1) is tie-barred to Senate Bill 816.

Senate Bill 816 (S-4)

The bill specifies that, except as otherwise provided, a person who, without lawful authority, tampered with, took, or removed a marine safety device owned or maintained by the State or a political subdivision of the State, knowing or having reason to know that the device was a marine safety device, would be guilty of a misdemeanor

punishable by up to 93 days' imprisonment, a maximum fine of \$1,000, or both.

A violation that rendered a marine safety device unavailable or unusable for rescue when needed, and was the proximate cause of serious impairment of a body function of another person, would be a felony punishable by up to five years' imprisonment, a fine of not less than \$1,000 or more than \$5,000, or both imprisonment and a fine. A violation that rendered a marine safety device unavailable or unusable for rescue when needed, and was the proximate cause of the death of another person, would be a felony punishable by up to 15 years' imprisonment, a fine of not less than \$2,500 or more than \$10,000, or both.

"Serious impairment of a body function" would mean that term as it is defined in Section 58c of the Michigan Vehicle Code (MCL 257.58c). Under Section 58c, that term includes one or more of the following:

- Loss of a limb or use of a limb.
- Loss of a foot, hand, finger, or thumb or loss of use of a foot, hand, finger, or thumb.
- Loss of an eye or ear or use of an eye or ear.
- Loss or substantial impairment of a bodily function.
- Serious visible disfigurement.
- A comatose state that lasts for more than three days.
- Measurable brain or mental impairment.
- A skull fracture or other serious bone fracture.
- Subdural hemorrhage or subdural hematoma.
- Loss of an organ.

Senate Bill 817 (S-1)

The bill would include the felony violations proposed by Senate Bill 816 (S-4) in the sentencing guidelines. A violation causing serious impairment of a body function would be a Class E felony against a person with a statutory maximum sentence of five years' imprisonment. A violation causing death would be a Class C felony against a person with a statutory maximum sentence of 15 years' imprisonment.

Proposed MCL 750.498b (S.B. 816)

MCL 777.16x (S.B. 817)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Marine safety equipment is crucial to maintaining safety on Michigan beaches and piers, especially with the likelihood of rip currents in Great Lakes waters. Easy access to safety devices, such as life preservers, life rings, and ropes, can mean the difference between life and death for a swimmer in peril or a person who falls or is swept off a pier. Unfortunately, these important devices seem to be the target of thieves. According to testimony before the Senate Judiciary Committee by a member of the Great Lakes Beach and Pier Safety Task Force, in 2005, 22 life rings were stolen from the beach and pier at Grand Haven.

Under current law, a person who steals or damages property may be charged with larceny or malicious destruction; if the property is worth less than \$200, the penalty for either offense is up to 93 days' imprisonment and/or a maximum fine of \$500 or three times the value of the property. By specifically prohibiting the unlawful removal of or tampering with marine safety equipment, and enacting strict felony penalties for violations that were the proximate cause of serious injury or death, the bills would provide an adequate punishment for those who steal or damage life rings and other water safety equipment. The prospect of those penalties also could deter some from taking this equipment for souvenirs or as a prank, thereby keeping life-saving equipment in places where it can help to save lives.

Response: Senate Bill 816 (S-4) could promote deterrence by requiring that signs be posted to inform the public of the penalty for unlawful removal of or tampering with marine safety equipment.

Opposing Argument

Senate Bill 816 (S-4) may not adequately address the problem. If a person took a life ring, and then weeks later someone drowned at the beach, it would be difficult to show that the removal of the equipment caused the drowning or that the person who

took the device intended for someone to die because of his or her actions.

Response: The bill would not require a showing of intent to cause a serious impairment or death, or that a person's injury or death was caused solely by the removal of the safety device. A felony prosecution under the bill would require that the violation was the proximate cause of the injury or death. (According to *Black's Law Dictionary*, Eighth Edition, "proximate cause" means a cause that is legally sufficient to result in liability or a cause that directly produces an event and without which the event would not have occurred.)

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bills would have an indeterminate fiscal impact on State and local government. There are no data to indicate how many offenders would be convicted of the proposed offense. An offender convicted of the Class C offense under the bills would receive a sentencing guidelines minimum sentence range of 0-11 months to 62-114 months. An offender convicted of the Class E offense would receive a sentencing guidelines minimum sentence range of 0-3 months to 24-38 months. For both the proposed felonies and the proposed misdemeanor, local governments would incur the costs of incarceration in local facilities, which vary by county. The State would incur the cost of felony probation at an annual average cost of \$2,000, as well as the cost of incarceration in a State facility at an average annual cost of \$30,000. Additional penal fine revenue would benefit public libraries.

Fiscal Analyst: Lindsay Hollander

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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.