

Legislative Analysis



OPERATION OF SPORTSCRAFT WITH BAC OF 0.08 GRAMS OR HIGHER

Mitchell Bean, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 4789 (Substitute H-1)
Sponsor: Rep. Bettie Cook Scott

House Bill 4794 (Substitute H-1)
Sponsor: Rep. Tonya Schuitmaker

House Bill 4795 as introduced
Sponsor: Rep. Marc Corriveau

House Bill 4813 as introduced
Sponsor: Rep. Neal Nitz
Committee: Judiciary

First Analysis (6-11-07)

BRIEF SUMMARY: The bills would prohibit a person from operating an ORV, watercraft, or snowmobile with a bodily alcohol level of 0.08 grams or any bodily amount of a Schedule 1 controlled substance or cocaine, increase the length of a license suspension for refusing to submit to a chemical test, and allow for enhanced penalties for multiple violations occurring within any number of years.

FISCAL IMPACT: The bills would have fiscal implications for state and local governments. A more detailed analysis of the fiscal impact follows later.

THE APPARENT PROBLEM:

Statutes regulating the operation of snowmobiles, ORVs, and watercraft have historically mirrored the drunk driving provisions in the vehicle code for operation of motor vehicles. Public Act 61 of 2003 amended the Michigan Vehicle Code to establish a bodily alcohol content (BAC) of 0.08 grams, instead of 0.10 grams, as the *per se* level for drunk driving. The act also created a new offense category prohibiting a person from operating a vehicle with any amount of a Schedule 1 drug or cocaine in his or her body. Legislation is being offered to make the statutes regarding the operation of recreational vehicles and vessels conform with the recent changes in the vehicle code.

THE CONTENT OF THE BILLS:

The bills would amend various provisions of the Natural Resources and Environmental Protection Act pertaining to the operation of ORVs, watercraft, and snowmobiles to make them conform to recent changes in the drunk driving provisions of the Michigan Vehicle Code.

Currently under the NREPA, it is prohibited to operate an ORV, watercraft, or snowmobile while under the influence of intoxicating liquor or a controlled substance, or both.

House Bill 4789 would amend provisions pertaining to ORVs (MCL 324.81101 et al.). House Bill 4794 would amend provisions pertaining to watercraft (MCL 324.80101 et al.). House Bill 4795 would amend provisions pertaining to snowmobiles (MCL 324.82101 et al.). House Bill 4813 would amend the sentencing guidelines. The bills would take effect January 1, 2008.

House Bills 4789, 4794, and 4795 would, in general, do the following:

- Replace references to “intoxicating liquor” with “alcoholic liquor” and define that term as it is defined in Section 1d of the Michigan Vehicle Code.
- Prohibit a person from operating an ORV, watercraft, or snowmobile with a bodily alcohol content (BAC) of 0.08 grams or higher or any bodily amount of a Schedule 1 controlled substance or cocaine. This would be in addition to the current prohibitions on being under the influence of alcohol or a controlled substance, or both, and of operating a vehicle or vessel while visibly impaired from the consumption of alcohol or a controlled substance, or both.
- Prohibit the owner or person in charge of an ORV, watercraft, or snowmobile from allowing another person to operate the vehicle or vessel while having a BAC of 0.08 grams or higher; any bodily amount of a Schedule 1 controlled substance or cocaine (for an ORV, this would apply only if the operator caused the death or serious impairment of another person); or while the person’s ability to operate the vehicle or vessel was visibly impaired due to the consumption of alcohol, a controlled substance, or a combination of both. This would be in addition to the current prohibition on being under the influence of alcohol or a controlled substance or both.
- Change all current references to a BAC of 0.10 grams to a BAC of 0.08 grams.
- Delete language pertaining to legal presumptions. Currently, if at the time of the offense the person had a BAC of 0.07 grams or less, he or she is presumed not to be impaired. A BAC of more than 0.07 grams but less than 0.10 is presumed to be impaired. A BAC of 0.10 or more is presumed to be under the influence. (Identical presumptions contained in the Michigan Vehicle Code were eliminated by Public Act 61 of 2003.)
- Delete the definition of “serious impairment of a body function” and replace it with the definition contained in Section 58c of the Michigan Vehicle Code.
- Increase the suspension of a person’s right to operate an ORV, watercraft, or snowmobile for unreasonably refusing to submit to a chemical test from six months to one year for a first refusal, and from one year to two years for a second or subsequent refusal within seven years.
- For ORV, watercraft and snowmobile violations involving alcohol and/or controlled substances, allow enhanced penalties, suspension of the right to operate an ORV for one to two years, and permanent revocation of the right to operate a vessel or snowmobile upon a third or subsequent conviction regardless of the years elapsed

since the previous convictions (currently, these penalties are triggered when a person had two or more convictions in the previous 10 years).

Additional provisions regarding ORVs.

- Add a mechanism for an appeals process for a person aggrieved by a final determination by the secretary of state for operators of ORVs that is identical to the appeals process in place for operators of snowmobiles and watercraft. House Bill 4789 would also add a provision to allow a peace officer to petition the circuit court to review the determination of a hearing officer if, after an administrative hearing, the person who refused the chemical test prevailed. This change is identical to provisions pertaining to snowmobiles and watercraft.
- Repeal Section 81135, which prohibits the operation of an ORV while visibly impaired due to consumption of alcoholic liquor and/or a controlled substance, and instead place the prohibition within Section 81134. A violation would still be a misdemeanor punishable by up to 93 days imprisonment and/or a fine, but the fine, currently a maximum of \$300, would be an amount between \$100 and \$500, the same as it is for operating an ORV under the influence or with a BAC of 0.08. A person convicted of operating an ORV while visibly impaired would be prohibited from operating an ORV for between 93 days (increased from a minimum of 90 days) and a year for a first offense, six months to eighteen months for a second offense, and one to two years for a third or subsequent offense.
- Establish tiered criminal penalties for an owner or person in charge who allowed a person to operate an ORV when intoxicated, under the influence, or visibly impaired by drugs or alcohol. A violation would, as now, be a misdemeanor punishable by imprisonment of not more than 93 days or a fine of not less than \$100 or more than \$500, or both. The bill would add an enhanced penalty for a violation causing death or a serious injury. A violation causing death would be a felony with a maximum term of imprisonment of five years or a fine of not less than \$1,500 or more than \$5,000, or both. A violation causing a serious impairment of a body function would also be a felony punishable by up to two years imprisonment, a fine of not less than \$1,000 or more than \$5,000, or both.

House Bill 4813

The bill would amend the Code of Criminal Procedure (MCL 777.13g) to specify that allowing an ORV to be operated by a person while intoxicated or impaired causing death would be a Class E felony against a person with a maximum term of imprisonment of five years; causing serious impairment would be a Class G felony with a two year maximum term of imprisonment. The bill would also amend existing sentencing guidelines pertaining to operating vessels, ORVs, and snowmobiles while under the influence causing death or serious impairment to include the elements of being impaired or with the presence of a controlled substance.

The bill is tie-barred to House Bills 4789, 4794, and 4795.

BACKGROUND INFORMATION:

Similar packages of legislation were passed by the House but died in the Senate in the 2003-2004 and 2005-2006 legislative sessions.

FISCAL INFORMATION:

The bills' fiscal impact on local and state correctional systems would depend on how they affected misdemeanor and felony convictions and sentences. There apparently are no data on the number of misdemeanor convictions under current law, but to the extent that the bills increased the numbers of misdemeanor sentences, local costs of jail incarceration or misdemeanor probation supervision, both of which vary by jurisdiction, could increase.

To the extent that the bills increased the numbers of felony convictions for initial or subsequent offenses, they could increase state or local correctional costs. The average appropriated cost of incarceration in a state prison is about \$31,000 per prisoner annually, a figure that includes allocated portions of various fixed costs. The state's average cost of felony parole and probation supervision is about \$2,000 per supervised offender per year. Costs of any jail incarceration would be borne by the affected county and vary by jurisdiction.

In 2005, there were two felony dispositions for offenses included in the bills: both were for causing a serious injury while operating a watercraft under the influence of alcohol or drugs. Both offenders received probation. In 2004, there were three felony dispositions for offenses included in the bills: one for boating under the influence and causing a death, one for boating under the influence and causing serious injury, and one for operating an ORV under the influence and causing serious injury. The two boating sentences were to prison, and the ORV sentence was probation.

Any increase in penal fine revenues could benefit local libraries, which are the constitutionally-designated recipients of such revenues.

ARGUMENTS:

For:

Historically, the rules for consuming alcohol and then operating snowmobiles, ORVs, and watercraft in the state have been the same as for operating a motor vehicle. With the enactment of Public Act 61 of 2003, which lowered the *per se* bodily alcohol content (BAC) for driving while intoxicated from 0.10 to 0.08 grams, it is now necessary to make changes to the statutes regulating these recreational vehicles and vessels. The bills would adopt the same *per se* level of a 0.08 BAC as used in the vehicle code, thus bringing consistency and uniformity between the acts. House Bill 4789 would also correct an oversight by adding a mechanism for an appeals process for ORV operators who receive an adverse determination in an administrative hearing regarding a refusal to submit to a chemical test. This appeals process is already in place for operators of snowmobiles and watercraft.

For:

The bills are needed to right the scales of justice for victims injured or killed by impaired operators of ORVs, watercraft, and snowmobiles. Under current laws, a drunk or drugged driver faces harsher penalties than a drunk or drugged operator of a recreational vehicle.

As an example, the father of a 7-year-old boy who died after being struck by a speeding personal watercraft, and the prosecutor involved in the case, both testified before the committee that since the BAC of the operator registered 0.08, he could only be charged with negligent homicide – a two-year felony. He served six months in a county jail and received 18 months of probation, at the end of which time he can lawfully operate watercraft again. Had the same incident occurred with a motor vehicle, the man could have been charged with a 15-year felony.

In addition, the 2003 legislation that lowered the drunk driving threshold to a 0.08 BAC also made it illegal to drive with any bodily content of cocaine or Schedule 1 drugs – which includes heroin, LSD, and marijuana. These drugs are well-known for altering a person's judgment and physical acuity. Operating these vehicles and vessels on crowded trails and crowded lakes and streams already carry an inherent danger of flipping over on rough terrain, hitting trees, or colliding with other vehicles and vessels; operating watercraft, ORVs, or snowmobiles while impaired or under the influence only increases those risks. State laws should not be giving the message that a person too drunk or high to drive a car is OK to operate a boat, jet ski, snowmobile, or ORV.

Against:

Some feel that the only reason the BAC level for drunk driving was lowered to 0.08 grams was because of strong-arm tactics by the federal government – either the state adopted a BAC of 0.08 or it faced a loss of federal transportation dollars for road repairs. Many believed at the time that each state should have been allowed to craft drunk driving laws that fit its own unique needs. For instance, some felt that changes to the repeat offenders law significantly reduced the incidents of drunk driving in the state and therefore the 0.10 BAC should have been allowed to remain in place. And now, the BAC levels for recreational vehicles will be lowered just to be consistent with motor vehicles, a move which appears to some to punish responsible social drinkers. Unless a risk to the public safety is documented, the levels should be left the same.

Response:

Proponents of the bills say that safety requires that the bodily alcohol levels be consistent regardless of the vehicle or vessel being operated. At least in the case of snowmobiles, and sometimes ORVs, these vehicles on occasion enter the roadway. (Pending legislation would allow ORVs and snowmobiles to be operated on roadways under certain conditions.) There shouldn't be two levels of intoxication – one level for driving a car and another for recreational vehicles such as boats, ORVs, and snowmobiles. An impaired operator is dangerous whether driving a snowmobile or a car. It is well documented that a BAC of 0.08 grams and over results in significant impairment of judgment and motor skills. And many accidents involving boats and personal watercraft are caused by operators who have been drinking or using drugs. Further, statistics support the assumption that many lives will be protected by the lower BAC levels for recreational vehicles and watercraft. The federal mandate may have forced the legislature to consider the issue sooner than it would have, but making a BAC of 0.08 grams the *per se* level for drunk driving, in any vehicle, is still good public policy.

POSITIONS:

The Department of State Police supports the bills. (6-6-07)

The Prosecuting Attorneys Association of Michigan supports the bills. (6-6-07)

The Michigan Sheriffs' Association supports the bills. (6-6-07)

The Michigan Boating Industries Association indicated support for HB 4794. (6-6-07)

The National Marine Manufacturers Association indicated support for HB 4794. (6-6-07)

The Michigan Licensed Beverage Association indicated opposition to the bills. (6-6-07)

ACLU indicated opposition to HB 4794 and 4795 as written. (6-6-07)

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Marilyn Peterson

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.