

Legislative Analysis



OPERATION OF SPORTCRAFT: CONFORM WITH VEHICLE CODE ALCOHOL PROVISIONS

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

House Bills 4441 & 4442
Sponsor: Rep. Matt Lori

House Bills 4443 & 4444
Sponsor: Rep. Dave Pagel

House Bills 4445 & 4446
Sponsor: Rep. Andrew Kandreas

Committee: Criminal Justice
Complete to 4-23-13

A SUMMARY OF HOUSE BILLS 4441-4446 AS INTRODUCED 3-13-13

BRIEF SUMMARY:

House Bills 4441, 4443, and 4445 would amend various provisions of the Natural Resources and Environmental Protection Act (NREPA) pertaining to the operation of watercraft, snowmobiles, and ORVs to make them conform to the drunken driving provisions of the Michigan Vehicle Code.

The bills would, among other things, change all current references to a bodily alcohol content (BAC) of 0.10 grams to a BAC of 0.08 grams.

Currently, the *per se* level for drunken operation of an ORV, snowmobile, or watercraft is 0.10 grams or more per 100 milliliters of blood. In addition, provisions regarding the operation of a sportcraft are not consistent among ORVs, snowmobiles, or watercraft. The legislation would take effect November 1, 2013.

House Bills 4442, 4444, and 4446 would make complementary amendments to the sentencing guidelines provisions in the Code of Criminal Procedure.

House Bills 4441 and 4442 address *watercraft*. House Bills 4443 and 4444 address *snowmobiles*. House Bills 4445 and 4446 address *ORVs* (off-road recreation vehicles).

DETAILED SUMMARY:

Generally speaking, House Bills 4441, 4443, and 4445 would amend various provisions of the Natural Resources and Environmental Act (NREPA) to do the following:

- Change all current references to a BAC of 0.10 grams to a BAC of 0.08 grams.
- 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. The bills would retain the current

prohibitions on operating sportcraft while under the influence of alcoholic liquor and/or a controlled substance.

- Replace references to "intoxicating liquor" with "alcoholic liquor" and define that term as it is defined in Section 1d of the Michigan Vehicle Code.
- Apply "Heidi's Law" —which makes a third violation of drunk or drugged driving a felony, regardless of the time elapsed since the previous convictions—to drunk or drugged operation of a sportcraft and allow for an indefinite suspension of the right to operate a sportcraft upon a third or subsequent conviction. Currently, these penalties are triggered when an individual has two or more convictions in the previous 10 years.
- 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, she or she is presumed not to be impaired. A BAC of more than 0.07 grams but less than 0.10 grams 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 PA 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.
- Prohibit the owner or person in charge of a sportcraft from authorizing its use if the person operating the sportcraft is under the influence of alcohol and/or a controlled substance; has a BAC of 0.08 grams or more; or is visibly impaired due to the consumption of alcoholic liquor, a controlled substance, or a combination of the two.
- Establish a new violation for a person under 21 years of age operating a sportcraft with any "bodily alcohol content" identical to provisions in the Vehicle Code. A violation would be a misdemeanor punishable by community service for not more than 360 hours and/or a fine of not more than \$250; the court could also order the payment of prosecution costs. A second or subsequent offense within seven years would result in an enhanced penalty, including the possibility of up to 93 days in jail. However, other than this enhancement, only one violation or attempted violation of the "minor in possession" prohibition could be counted as a prior conviction when establishing the number of prior convictions for determining enhanced sentences under other violations of drunk or drugged operation of a sportcraft.

- Establish a new violation for anyone operating a sportcraft under the influence of drugs or alcohol, visibly impaired, or operating under the influence and who causes severe impairment or death with a person less than 16 years of age onboard the sportcraft. A violation would be a misdemeanor punishable by a fine between \$200 and \$1,000 and imprisonment for not less than five days or more than a year and/or not less than 30 days or more than 90 days of community service.

A second violation within 7 years or a third or subsequent violation regardless of the time elapsed since the last prior conviction would be a felony punishable by a fine of not less than \$500 or more than \$5,000 and either:

(1) imprisonment under the jurisdiction of the Department of Corrections for at least one year but not more than five years or

(2) probation in the county jail for at least 30 days but not more than one year along with community service for at least 60 days but not more than 180 days.

Not less than 48 hours of any term of imprisonment for either a misdemeanor or felony would have to be served consecutively and a sentence could not be suspended.

- Establish a new violation for a person under 21 years of age operating a sportcraft with any BAC with someone under the age of 16 on board. Individuals violating this provision would be guilty of a misdemeanor punishable by up to 60 days of community service, a \$500 maximum fine, and/or up to 93 days' imprisonment. For violations occurring within seven years of a prior conviction or after two or more prior convictions, regardless of the time elapsed since the prior conviction, a person would have to pay a fine between \$200 and \$1,000 and either five days to one year imprisonment, or between 30 and 90 days of community service, or both. At least 48 hours of the imprisonment must be served consecutively and the imprisonment could not be suspended.
- Include a minor in possession and operating a sportcraft in violation of the alcohol/drug prohibitions with a person under 16 years in age in the list of offenses for which a peace officer may make an arrest without a warrant.
- Define "prior conviction" and "law of another state" uniformly among the various statutes.

Additional provisions regarding ORVs

- Repeal Section 81135, which prohibits the operation of an ORV while visibly impaired due to the consumption of alcoholic liquor and/or a controlled substance, and relocate the provision to Section 81134. The minimum mandatory suspension of the right to operate an ORV for a first offense would be increased from 90 days to 93 days. A third offense, regardless of the years elapsed since the prior convictions, would be a felony.

- 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 4445 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.
- Increase the maximum fine for a civil infraction for refusing to submit to a preliminary breath analysis upon a lawful request by a peace officer from \$100 to \$500. This then would be identical to the penalty imposed for snowmobiles and watercraft.
- Revise various prohibitions and penalties to conform to those applying to snowmobiles and watercraft.

Additional provisions regarding **snowmobiles**

- An individual who refuses to submit to a preliminary chemical test upon the lawful request of a peace officer would be responsible for a state civil infraction and subject to a civil fine of not more than \$500 instead of being guilty of a misdemeanor. This then would be identical to the penalty imposed for ORVs and watercraft.
- If a person had one or more prior convictions for an alcohol/drug violation within seven years, a court could order a person to not operate a snowmobile for a period of not less than one year or more than two years. The person would be required to take and successfully complete the snowmobile safety education and training program before operating a snowmobile.

House Bill 4441 would amend MCL 324.80101 et al. and would apply to the operation of watercraft. House Bill 4443 would amend MCL 324.82101 et al. and would apply to the operation of snowmobiles. House Bill 4445 would amend MCL 324.81101 et al. and would apply to the operation of ORVs.

House Bill 4442 would amend the Code of Criminal Procedure (MCL 777.13g) to specify that operating a **vessel** (1) while under the influence, impaired, or with the presence of a controlled substance causing death would be a Class C felony against a person with a maximum prison term of 15 years; (2) while under the influence, impaired, or with the presence of a controlled substance causing serious impairment would be a Class E felony against a person with a maximum prison term of five years; (3) under the influence or with the presence of a controlled substance resulting in a third or subsequent offense would be a Class E felony against the public safety with a maximum prison term of five years; and (4) while intoxicated or impaired with a minor onboard resulting in a subsequent offense would be a Class E felony against a person with a maximum prison term of five years. The bill is tie-barred to House Bills 4441 and 4445.

House Bill 4444 would also amend Section 13g of the Code of Criminal Procedure (MCL 777.13g) to specify that operating a **snowmobile** while (1) under the influence, impaired, or with the presence of a controlled substance causing death would be a Class C felony against a person with a maximum prison term of 15 years; (2) under the influence, impaired, or with the presence of a controlled substance causing serious impairment would be a Class E felony against a person with a maximum prison term of five years; (3) under the influence or with the presence of a controlled substance resulting in a third or subsequent offense would be a Class E felony against the public safety with a maximum prison term of five years; and, (4) operating a snowmobile while under the influence or impaired with a minor in the vehicle resulting in a subsequent offense would be a Class E felony against a person with a maximum term of imprisonment of 5 years. The bill is tie-barred to House Bill 4443.

House Bill 4446 would amend the Code of Criminal Procedure (MCL 777.13g) to specify that a person operating an **ORV** (1) while under the influence, impaired, or with the presence of a controlled substance, resulting in a third or subsequent offense, would be a Class E felony against the public safety with a maximum prison term of five years; (2) while under the influence, impaired, or with the presence of a controlled substance causing death would be a Class C felony against a person with a maximum prison term of 15 years; (3) while under the influence, impaired, or with the presence of a controlled substance causing serious impairment would be a Class E felony against a person with a maximum prison term of five years; and (4) while intoxicated or impaired with a minor in the ORV resulting in a subsequent offense would be a Class E felony against a person with a five-year maximum term of imprisonment. The bill is tie-barred to House Bill 4445.

BACKGROUND INFORMATION:

Similar packages of legislation were passed by the House but died in the Senate in the 2003-2004, 2005-2006, and 2007-2008 legislative sessions. Last session, House Bills 4072-4073, 4794-4795, and 5028-5029 were reported by the House Judiciary Committee but failed to see floor action.

FISCAL IMPACT:

House Bills 4441, 4443, and 4445 would have no fiscal implications for the Department of Natural Resources.

To the extent that the bills result in a greater number of convictions, increased costs on state and local correctional systems would occur. Information is not available on the number of persons that might be convicted under these provisions. New felony convictions could result in increased costs related to state prisons, county jails, and/or state probation supervision. New misdemeanor convictions could increase costs related to county jails and/or local misdemeanor probation supervision. The average cost of prison incarceration in a state facility is roughly \$35,500 per prisoner per year, a figure that includes various fixed administrative and operational costs. The costs of local

incarceration in a county jail and local misdemeanor probation supervision vary by jurisdiction. State costs for parole and felony probation supervision average about \$3,000 per supervised offender per year. Any increase in penal fine revenues would increase funding for local libraries, which are the constitutionally-designated recipients of those revenues.

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Viola Wild
Robin Risko

■ 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.