

# Legislative Analysis



## OPERATION OF SPORTCRAFT: CONFORM W/VEHICLE CODE ALCOHOL PROVISIONS

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**House Bill 4072 (Substitute H-3)**  
**House Bill 4073 with committee amendment**  
**Sponsor: Rep. Matt Lori**

**House Bill 4794 (Substitute H-1)**  
**House Bill 4795 (Substitute H-1)**  
**Sponsor: Rep. Sharon Tyler**

**House Bill 5028 (Substitute H-1)**  
**House Bill 5029 (Substitute H-1)**  
**Sponsor: Rep. Andrew Kandrevas**

**Committee: Judiciary**  
**First Analysis (12-2-12)**

**BRIEF SUMMARY:** House Bills 4072, 4794, and 5028 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.

House Bills 4073, 4795, and 5029 would make complementary amendments to the sentencing guidelines provisions in the Code of Criminal Procedure.

**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. PA 61 also created a new offense category prohibiting a person from operating a motor vehicle with any amount of a Schedule 1 drug or cocaine in his or her body.

Legislation is being offered to, among other things, make the statutes regarding the operation of ORVs, watercraft, and snowmobiles conform to the changes in the Vehicle Code brought about by Public Act 61.

In addition, provisions are not consistent among the different types of sportcraft. For instance, a person who refuses to consent to a breathalyzer test by a peace officer is responsible for a state civil infraction if operating a watercraft or ORV, but would pay up to \$500 for that infraction if operating a watercraft but only a maximum of \$100 if operating an ORV. However, the same refusal by a person operating a snowmobile is a

misdemeanor. Legislation is being proposed to make the statutes regarding the operation of ORVs, watercraft, and snowmobiles conform more closely to each other.

### ***THE CONTENT OF THE BILLS:***

Currently, the *per se* level for drunk 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.

Generally speaking, House Bills 4072, 4794, and 5028 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.
- 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. (Thus, a minor who had multiple convictions under this provision would have only one of those convictions following him or her into adulthood.)
- Establish a new violation for anyone operating a vessel 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 vessel 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.

- Define "prior conviction" 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, 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 5028 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.

#### Additional provision 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.

House Bill 4072 would amend MCL 324.80101 et al. and would apply to the operation of watercraft. House Bill 4794 would amend MCL 324.82101 et al. and would apply to the operation of snowmobiles. House Bill 5028 would amend MCL 324.81101 et al. and would apply to the operation of ORVs.

**House Bill 4073** 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 a Class E

felony against a person with a maximum prison term of five years. The bill is tie-barred to House Bill 4072.

**House Bill 4795** 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 or with 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) a subsequent offense of operating a snowmobile while intoxicated or impaired with a minor in the vehicle 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 4794.

**House Bill 5029** 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 5028.

#### ***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.

#### ***FISCAL INFORMATION:***

House Bills 4072 and 4094 would have no significant fiscal impact on the Department of Natural Resources.

To the extent that the bills result in a greater number of felony or misdemeanor convictions, they could increase costs on state and local correctional systems. Information is not available on the number of persons that might be convicted under these new provisions. New felony convictions could result in increased costs related to state prisons, county jails, and/or state felony 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 \$34,000 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, exclusive of the cost of electronic tether, average about \$2,200 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.

## **ARGUMENTS:**

### ***For:***

Historically, the laws 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.

The bills would also correct several inconsistencies between the three types of sportcraft. For example, House Bill 5028 would 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. House Bill 4794 would change a criminal penalty for refusing to take a breathalyzer test to a civil infraction as it is for operators of watercraft and ORVs and standardize the civil fine to \$500.

### ***For:***

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

In one well-publicized Cass County example, a seven-year-old boy died when he was struck by a jet-ski operated by a man with a BAC of 0.08. Even though, according to media reports, the man acknowledged he operated the watercraft at a high rate of speed and in a reckless fashion, even after being warned by adults on the boat that was towing the tubes on which the young boy and other children were riding, the current presumptions in the law meant he could only be prosecuted as being impaired. Thus, he saw no prison time, only minimal time in the county jail, and was eligible to operate watercraft again within two years. 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 safely is OK to operate a boat, Jet Ski, snowmobile, or ORV.

***Against:***

In 2003, the state faced the loss of federal transportation dollars for road repairs if it didn't lower the BAC level for drunk driving to 0.08 grams. Unless a risk to the public safety is documented, some feel the levels should be left where they are.

***Response:***

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, and can even 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. Most snowmobile accidents also involve alcohol. Further, statistics support the assumption that many lives will be protected by the lower BAC levels for sportcraft. 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 and drugged driving, in any vehicle, is still good public policy.

***Against:***

The legislation still needs some tweaking before enactment. For instance, a third offense of operating an ORV while visibly impaired would be a felony, but the same crime is only a one-year misdemeanor if operating a watercraft or snowmobile.

***POSITIONS:***

The Cass County prosecutor testified in support of the bills. (1-19-12)

The Deputy Sheriff's Association indicated support for the bills. (1-19-12)

The Michigan State Police indicated support for the bills. (1-19-12)

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■ 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.