

**SFA**

BILL ANALYSIS

Senate Fiscal Agency

Lansing, Michigan 48909

(517) 373-5383

Senate Bill 745

Sponsor: Senator Michael O'Brien

Committee: State Affairs, Tourism, and Transportation

Date Completed: 9-18-90

MICHIGAN STATE LAW LIBRARY

**SUMMARY OF SENATE BILL 745 as introduced 1-23-90:**

**The bill would create the Motorboat Service and Repair Act to do the following:**

- Require the certification of motorboat mechanics and specialty mechanics.
- Require the licensure of motorboat repair facilities and impose a registration fee that ranged from \$50 to \$300, depending upon the gross income of the facility.
- Establish responsibilities of the Department of State in administering the proposed Act.
- Specify a customer's rights in dealings with a motorboat repair facility.
- Provide procedures for legal recourse and punishment for violations of the proposed Act.
- Require that fees collected under the Act in excess of administrative costs be credited to the Marine Safety Fund.

**Application of Act/Licensure**

The bill would require a motorboat repair facility to be licensed under the proposed Act even though it did not employ a motorboat mechanic or specialty mechanic, except as otherwise exempt under the proposed Act. Further, a motorboat mechanic would be allowed to perform repairs in a specific repair category only if certified under the bill, or if under the supervision of a specialty mechanic. "Motorboat repair facility" would mean a person (individual, partnership, corporation, or other legal entity) that engaged in the business of performing, or employed one or more motorboat mechanics who

performed, repair service on a motor or motorboat. "Motorboat mechanic" would mean a person who, for compensation, repaired motorboats, including the reconditioning, replacement, adjustment, or significant alteration of the operating condition of a motorboat, including any component or subassembly of a motorboat. "Motorboat" would mean a marine vessel propelled by a motor, i.e., an outboard or inboard motorboat propulsion unit, whether or not the motor was the principal source of propulsion and is detachable. A "specialty mechanic" would be a motorboat mechanic who was qualified in one or more of the following specific repair categories: engine; drive train; propulsion unit; propulsion unit controls; equipment specifically designed to ventilate bilge and engine compartments of combustible vapors; and equipment installed in the hull below the water line.

"Motorboat repair facility" would not include any of the following:

- A person who engaged only in the business of repairing the motorboats of a single commercial or industrial establishment or governmental agency, or two or more establishments related by common ownership or corporate affiliation.
- A person repairing his or her own or a family member's motorboat.
- A person who did not diagnose the operation of a motorboat, remove parts from a motorboat to be remachined, or install finished machined or remachined parts on a motorboat.

In addition, the bill would not apply to:

S.B. 745 (9-18-90)

- A marine fuel station.
- An individual who repaired the operating condition of his or her own or a family member's, motorboat, if there were evidence of personal or family ownership of that motorboat.
- A person who was a specialty mechanic or motorboat mechanic in the full-time employ of a motorboat or marine equipment manufacturer.

Effective December 31, 1991, the bill would require each motorboat repair facility to employ at least one specialty mechanic certified in each specific repair category that the facility provided. Each repair facility would have to have at least one specialty mechanic for every six motor boat mechanics it employed. After December 31, 1991, any work or repair involving a specific repair category performed by a noncertified mechanic would have to be inspected and approved by a specialty mechanic certified in the pertinent specific repair category.

After December 31, 1991, if a customer voluntarily requested services or parts for the repair of a motorboat without delay, due to an emergency, from a repair facility in a specific repair category for which the facility did not have a specialty mechanic, the facility could obtain a waiver of a customer's right to have work performed by a specialty mechanic. The waiver would not be effective unless given by the customer voluntarily, and unless the customer were informed of the implications of the waiver. The waiver of liability could not be used by a motorboat repair facility or anyone in its employ in an attempt to evade the proposed Act.

A person subject to the bill would be prohibited from engaging or attempting to engage in a method, act, or practice that was unfair or deceptive as described in the bill.

#### Administration

The Secretary of State, or his or her designee, would be required to administer the proposed Act, and the designee could not own, operate, or be an employee of a motorboat repair facility. The Department of State would have to do all of the following:

- Certify specialty mechanics.
- License motorboat repair facilities.

- Keep an accurate listing of each certified specialty mechanic.
- Engage in a program to inform the public of its rights and remedies under the proposed Act.
- Collect a \$6 fee for each certification examination.
- Establish procedures for receiving complaints of alleged violations.
- Promulgate rules and inform licensed facilities of rules, disciplinary hearings, orders, and suspensions or revocations.
- Keep a complete register of motorboat repair facilities, which would have to be open to public inspection.

Before a person engaged in employment as a specialty mechanic, the person would have to receive certification in one or more specific repair categories from the Department. To become certified as a specialty mechanic, a person would have to pass an examination designed to test his or her competency to diagnose correctly and repair motorboats in the specific repair category for which the applicant was applying. Examinations for certification could be written or oral. The Department would be required to review examinations given by public or private agencies, including the Department of Education and the motorboat manufacturing community. If the Department of State approved an agency for the purpose of administering examinations, the applicant could take the examination and the testing agency or the applicant would have to forward the results to the Department for review and verification. Otherwise, the applicant could take an examination as developed and administered by the Department.

In addition to providing for the certification of mechanics, the Department would be responsible for licensing and regulating repair facilities. The bill specifies the information pertaining to repair facilities that would have to be disclosed on a license form, including the principal occupation for the past five years of each officer, director, and partner, and each owner of 25% or more of the facility, and any person occupying a similar status or performing similar functions, as well as an irrevocable appointment of the Secretary of State as the agent for the facility for service of process. A licensed facility would have to be open for inspection by the Department during reasonable business hours, as dictated by the

facility's demand for seasonal operation. The bill specifically would prohibit a person from hindering, obstructing, or otherwise preventing such an inspection.

The bill would require a motorboat facility to maintain copies of contracts and papers used with respect to transactions pertaining to estimates, diagnoses, repairs, waivers, and warranties for at least one year after the transaction, and to post business hours during which the Department could inspect all records.

A motorboat repair facility license and a motorboat mechanic's certification would have to be renewed annually. If a license or certification were lost, destroyed or mutilated, a duplicate copy could be obtained upon payment of a \$5 fee and proof of the loss, destruction or mutilation.

#### Fees

The yearly license fee for a motorboat repair facility would have to be determined by a sliding scale based upon the gross yearly income of the facility or the division or business subunit of a partnership, firm, corporation, or other legal entity operating as a facility, excluding income derived from winterizing or dewinterizing motorboats for storage, new boat preparation, or hull refinishing. The fee would range from \$50 for gross income up to \$50,000--in \$50 increments for each additional \$50,000 gross income--to \$300 for gross income over \$250,000. The renewal fee for an expired license would be one and one-half times the fee for an unexpired renewal. Any information that a facility had to furnish under this provision would not be subject to disclosure under the Freedom of Information Act, except for the yearly statewide gross figures compiled by the Department as long as those figures could not be used to identify a particular facility.

The certification fee for specialty mechanics would be \$25 annually, and the renewal fee for a motorboat mechanic certification would be \$20. The certificate would have to list the specific repair categories in which the specialty mechanic was certified. The renewal fee for a certification that had expired would be one and one-half times the fee for the renewal of a certification that had not expired. A person certified in at least one specific repair category

could apply for certification in additional categories without paying a fee.

#### Violations

The Department could issue a cease and desist order or take other affirmative action if it determined, after notice and a hearing, that a person violated the proposed Act or a rule promulgated under it, or had engaged in an unfair or deceptive practice. Further, the Department could deny, suspend, or revoke a license or certificate if a facility or mechanic were determined to have done any of the following:

- Engaged in an unfair or deceptive practice or made an untrue statement of material fact.
- Violated the proposed Act or a rule promulgated under it.
- Violated a condition of probation.
- Made unnecessary or unauthorized repairs.
- Refused to honor a warranty made by a facility.
- Caused or allowed a customer to sign a blank document relating to the repair of a motorboat.
- Been enjoined from engaging in the business or activity of a motorboat repair facility or from a violation of the proposed Act or a rule promulgated under it.
- Maintained a stockholder, officer, director, or partner who was guilty of an act or omission that would be cause for refusing, revoking, or suspending a license issued to the guilty party as an individual.
- Failed to comply with the terms of a final cease and desist order.
- Departed from, or disregarded in any material respect, accepted motorboat repair industry standards or the manufacturers specifications for motorboat repairs.
- Been convicted of a violation of the proposed Act.
- Used the waiver of liability provision in an attempt to evade the Act.

As an alternative to denying, suspending, or revoking the certification of a specialty mechanic who departed from or disregarded accepted

industry standards or manufacturer specifications, or as part of the terms of suspension or probation for a violation, the Department could require the mechanic to do both of the following:

- Complete successfully a training course or program approved by the Department as a prerequisite to continued certification.
- Perform only specific motorboat repairs or repair procedures as identified by the Department for a period of time as determined by the Department or unit until the mechanic produced evidence of competency acceptable to the Department.

The bill would authorize the Attorney General or a county prosecutor to bring an injunctive action against a person who appeared to have violated, or was about to violate the proposed Act or a rule promulgated under it.

The Department would be authorized to do all of the following:

- Make investigations and gather evidence against a violator.
- Require or permit a person to make a statement in writing, or otherwise as the Department determined, as to all the facts and circumstances concerning the matter to be investigated.
- Resolve disputes between parties arising from violations after establishing a system of informal dispute resolution for complaints or allowing the parties to use any existing system.
- Develop conditions of probation or operation.
- Conduct continuous spot check investigations during normal working hours upon giving the owner or manager personal notice of the investigator's presence.
- Conduct mechanical and diagnostic examinations of motorboats.

The bill also specifies that a person who engaged, or attempted to engage in the business of a motorboat repair facility or specialty mechanic without a license or certificate, or engaged in an act in violation of the proposed Act, would be barred from bringing an action for the collection of compensation for work

performed or materials or parts provided to any person in relation to the repair of a motorboat. The violator also would be barred from asserting a mechanic's, garageman's, or similar lien upon a motorboat. In addition, a customer would be entitled to recover any amount paid to an unlicensed facility for motorboat repairs.

The bill would provide for the recovery of damages plus reasonable attorney fees and costs upon a violation of the Act or a rule promulgated under it, or an unfair or deceptive practice, and for double damages upon a willful and flagrant violation. A person who directly or indirectly controlled a motorboat repair facility or its employees would be jointly and severally liable for a violation of the proposed Act, if the person knew or with the exercise of reasonable care should have known of the existence of the facts by reason of which the violation occurred. The proposed Act would not abrogate any common law right to contribution that could exist. Additionally, the bill would make a knowing violation a misdemeanor punishable by up to 90 days' imprisonment and/or a maximum fine of \$1,000 for a first offense, and imprisonment for up to one year and/or a maximum fine of \$5,000 for a subsequent conviction.

#### Customers' Rights

The bill would require a facility to give a customer a written estimate before beginning work, unless total costs would be under \$100. The bill also would permit a customer to waive his or her right to an estimate.

Further, the bill would establish a customer's right to see or receive replaced parts, and specifies the types of parts the facility would have to return, and, in what condition. A motorboat repair facility and a certified mechanic would be required to display conspicuously a current and valid certification with the appropriate license number or certification number. Further a motor repair facility would have to display a sign informing customers of the type of information the facility was required to provide to them.

Legislative Analyst: L. Burghardt

## FISCAL IMPACT

MICHIGAN STATE LAW LIBRARY

The bill would have no fiscal impact on local units of government and an indeterminate fiscal impact on the State. According to the Department of State, revenues collected under this bill are expected to cover administrative costs. Although complete data are not available at this time, the Department estimates that revenue collections would amount to approximately \$400,000 under this bill.

Fiscal Analyst: F. Sanchez

S8990\S745SA

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.