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BILL ANALYSIS

Senate Fiscal Agency

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Senate Bill 93

Sponsor: Senator John J. H. Schwarz, M.D.

Committee: Health Policy

Date Completed: 2-21-89

**SUMMARY OF SENATE BILL 93 as introduced 2-2-89:**

The bill would amend Public Act 319 of 1975, which provides for the registration and regulation of off-road recreation vehicles (ORVs), to:

- Prohibit a person under 16 years of age from operating an ORV on public lands or on frozen public waters, but permit a person under 16 to operate an ORV on private lands while under the supervision of a person 18 years of age or older.
- Require that a helmet be worn by an ORV operator or passenger, except when the ORV was equipped with a roof that met certain standards.
- Prohibit a person from operating an ORV while under the influence of, or visibly impaired by, liquor and/or a controlled substance, or if the person's blood contained 0.10% or more of alcohol, and set penalties for violations.
- Permit a peace officer to request that the blood, breath, or urine of an ORV operator be tested if the person were arrested for operating the vehicle under the influence of liquor and/or drugs, or for manslaughter as a result of operating the vehicle, and

permit the chemical analysis to be admissible evidence.

- Allow a person who was arrested to refuse a test, and permit that refusal to be admissible in evidence unless the person refused a blood test for certain medical conditions.
- Permit a peace officer who had reasonable cause to believe that a person was operating an ORV while impaired due to liquor and/or a controlled substance to arrest the operator without a warrant.

**Operator's Age Requirements**

Under the bill, a person under 16 years of age would be prohibited from operating an ORV on public lands or on the frozen surface of public waters. A person under 16 could operate an ORV on private lands while under the direct supervision of a person who was 18 years of age or older.

A parent or legal guardian of a child under 16 could not permit the child to operate an ORV, except on private lands and under the direct supervision of a person who was 18 years of age or older. The bill would delete the current provision in the Act that restricts a parent or legal guardian from permitting a child under 12 to operate a vehicle without the direct supervision of an adult, except on land owned

S.B. 93 (2-21-89)

by or under the control of the parent or legal guardian.

Under the bill, the owner or person in charge or in control of an ORV could not knowingly permit the vehicle to be operated by a person under 16 years of age, except on private lands under the direct supervision of a person 18 years of age or older.

The bill would delete current provisions that permit a person who is at least 12 years of age but under 16 to operate an ORV under certain conditions, and delete a provision prohibiting an operator under 12 from crossing a highway or street.

#### Helmets

A person could not operate an ORV unless the person and any passenger in or on the vehicle were wearing a crash helmet approved by the Department of State Police. The bill specifies that this provision would not apply if the vehicle were equipped with a roof that met or exceeded standards for a crash helmet and the operator and each passenger were wearing a properly adjusted and fastened safety belt.

#### Operating Restrictions and Penalties

A person could not operate an ORV if the person were under the influence of intoxicating liquor or a "controlled substance", as defined in the Public Health Code (MCL 333.7104), or a combination of intoxicating liquor and a controlled substance; or, if the person's blood contained 0.10% or more by weight of alcohol.

The owner or person in charge or in control of an ORV could not authorize or knowingly permit the ORV to be operated by a person who was under the influence of intoxicating liquor or a controlled substance or a combination of the two.

A person who was convicted of a violation of these restrictions would be guilty of a misdemeanor, punishable by imprisonment for up to 90 days, or a fine of at least \$100 and not more than \$500, or both, plus prosecution costs. A subsequent offense would be punishable as follows:

- A person would be guilty of a misdemeanor, punishable by imprisonment for up to one year, or a fine of up to \$1,000, or both for a second conviction within seven years under these provisions or a local ordinance that corresponded substantially to these provisions.
- A person would be guilty of a felony on a third or subsequent conviction within a period of 10 years under these provisions or a substantially corresponding local ordinance.

Upon conviction of a person for operating an ORV while under the influence or with a blood alcohol content of 0.10% or more, the court, in addition to the penalty imposed by the bill and as part of the sentence, could order the person not to operate an ORV for up to two years. The court also could order the person to participate in an alcohol or drug education or treatment program.

#### Impaired Operation and Penalties

A person would be prohibited from operating an ORV if, due to the consumption of intoxicating liquor, a controlled substance, or a combination of the two, the person had visibly impaired his or her ability to operate the vehicle. The bill specifies that a finding of guilty would be permissible under this provision if a person were charged with operating an ORV while under the influence or with a blood alcohol content of 0.10% or more.

A person convicted of violating this provision would be guilty of a misdemeanor, punishable by imprisonment for up to 90 days, or fine of up to \$300, or both, plus prosecution costs. On a second or subsequent conviction, the person would be guilty of a misdemeanor, punishable by imprisonment for up to one year, or a fine of up to \$1,000, or both.

#### Test Requested

A person who operated an ORV could be requested by a peace officer to submit to chemical tests of blood, breath, or urine to determine the amount of alcohol or presence of a controlled substance or both in his or her blood if:

- The person were arrested for operating an ORV while under the influence or impaired or with a blood alcohol content of 0.10% or more.
- The person were arrested for manslaughter resulting from operating an ORV and the peace officer had reasonable grounds to believe that the person was operating the ORV while impaired or under the influence.

If after an accident, the operator of an ORV involved in the accident were deceased, a sample of the decedent's blood would have to be withdrawn as directed by the medical examiner to determine blood alcohol content. The results of an examination of the blood could be used only for statistical purposes.

A person who was requested to take a chemical test would have to be advised of the right to refuse to submit to chemical tests. If the person refused a peace officer's request to submit to a chemical test, a test could not be given without a court order.

#### Admissible Evidence

In a criminal prosecution for operating an ORV while under the influence or impaired, or with a blood alcohol content of 0.10% or more, or for manslaughter resulting from operating an ORV while impaired or under the influence the amount of alcohol in the operator's blood at the time alleged as shown by chemical analysis of the operator's blood, urine, or breath would be admissible into evidence.

If a chemical test were given, test results would have to be made available to the accused or a person's attorney upon written request to the prosecution, with a copy of the request filed with the court. The prosecution would have to furnish the report at least two days before the day of the trial and the results would have to be offered as evidence by the prosecution in a criminal proceeding. Failure to comply fully with the request would bar the admission of the results into evidence by the prosecution.

Except in a prosecution relating solely to operating an ORV with a blood alcohol content of 0.10% or more, the bill specifies that the

amount of alcohol in the operator's blood at the time alleged as shown by chemical analysis of the operator's blood, urine, or breath would give rise to the following presumptions:

- If the blood alcohol content were 0.07% or less, it would be presumed that the operator was not under the influence of intoxicating liquor.
- If the blood alcohol content were above 0.07% but less than 0.10%, it would be presumed that the operator's ability to operate an ORV was impaired.
- If the blood alcohol content were 0.10% or more, it would be presumed that the operator was under the influence of intoxicating liquor.

#### Sampling/Testing

A sample or specimen of urine or breath would have to be taken and collected in a reasonable manner. Only a licensed physician, or a licensed nurse or medical technician under the direction of a licensed physician and qualified to withdraw blood acting in a medical environment, at the request of a peace officer, could withdraw blood to determine the alcoholic content of the blood. Liability for a crime or civil damages predicated on the withdrawing of blood and related procedures would not attach to a qualified person who withdrew blood or assisted in the withdrawal in accordance with the bill unless the withdrawal was performed in a negligent manner.

A person arrested for a crime listed in the bill who took a chemical test administered at the request of a peace officer would have to be given a reasonable opportunity to have a person of his or her own choosing administer one of the chemical tests within a reasonable time after his or her detention. Test results would be admissible and would be considered with other competent evidence in determining the defendant's innocence or guilt. If the person arrested were administered a chemical test by someone of his or her choosing, the person arrested would be responsible for obtaining a chemical analysis of the test sample, and would have to be informed that he or she had the right to demand that a person of his or her choosing administer one of the chemical tests, that the test results would be admissible and

would be considered with other competent evidence in determining innocence or guilt, and that the person arrested would be responsible for obtaining a chemical analysis of the test sample.

The bill specifies that the provisions on chemical testing should not be construed as limiting the introduction of any other competent evidence bearing on the question of whether the defendant was under the influence of intoxicating liquor.

#### Refusal To Take Test

The person arrested would have to be advised that he or she could refuse to take a test and, except for refusal due to certain medical conditions as provided in the bill, that the refusal was admissible in evidence.

Notwithstanding other provisions in the bill, a person who was asked to take a test would have to be advised that he or she had the option to demand that only a breath test be given. In that case, the person's refusal to submit to another test would not constitute a refusal.

If a jury instruction regarding a defendant's refusal to submit to a chemical test were requested by the prosecution or the defendant, the jury instruction would have to be given as specified in the bill.

A person who was afflicted with hemophilia, diabetes, or a condition requiring the use of an anticoagulant under the direction of a physician and who refused a chemical test would not be considered to have refused a chemical test if the test required the withdrawal of blood. This refusal would not be admissible in evidence in a criminal prosecution.

#### Arrest

If a peace officer had reasonable cause to believe that a person, at the time of an accident, was operating the ORV while his or her ability to do so was impaired due to the consumption of intoxicating liquor, a controlled substance, or a combination of the two, the peace officer could arrest the alleged operator without a warrant. The Act already permits the warrantless arrest of a person suspected of

operating an ORV while under the influence.

MCL 257.1617 et al.

Legislative Analyst: L. Arasim

#### FISCAL IMPACT

The bill would have an indeterminate impact on State and local units of government. Costs to the State would depend on the number of convictions under this bill. Statistics are not available for the number of individuals who would be convicted under the bill.

Fiscal Analyst: F. Sanchez

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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.