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BILL ANALYSIS

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Senate Fiscal Agency

Lansing, Michigan 48909

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Senate Bill 5 (Substitute S-4 as passed by the Senate)
Senate Bill 371 (Substitute S-2 as passed by the Senate)
Senate Bill 372 (Substitute S-1 as passed by the Senate)
Sponsor: Senator Richard D. Fessler
Committee: State Affairs, Tourism, and Transportation

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RATIONALE

With its more than 3,000 miles of Great Lakes coastline, over 11,000 inland lakes and more than 36,000 miles of inland rivers and streams, it is perhaps understandable why Michigan leads the nation in the number of boats registered (716,925 as of February 1987) and why recreational boating and other water sports have become increasingly important to the State's economy. It also is clear that there is growing concern over the problem of marine safety. According to the Department of Natural Resources, there were 608 boating and water accidents in 1985 with 157 fatalities, 237 injuries, and 260 accidents involving property damage. Some blame these accidents on the public's lack of knowledge about the proper operation of a boat, basic safety procedures and maritime "rules of the road". They claim that the lack of traffic controls, the considerable variance in the size, speed and maneuverability of marine vessels, and the variety and intensity of environmental conditions to which boat operators are exposed make boating and other water sports potentially much more dangerous than driving a car. Yet, they add, boat owners are not licensed by the State and anyone over 16 years of age may operate a boat alone without attending a water safety course or obtaining any instruction in the operation and maintenance of a boat.

Another factor which some feel contributes significantly to the accident record is faulty repair work on boats. The increasing complexity of boat machinery, the extreme weather conditions to which boats are exposed, and the difficult "conditions under which boats are operated make it imperative that boats be maintained in top condition and that any mechanical, electrical, or structural repair work be performed by trained, experienced personnel. They claim, however, that the lack of any State licensing requirements for boat mechanics makes it possible for unscrupulous or incompetent persons to offer their services as "mechanics" to unwitting boat owners, sometimes with tragic results.

Finally, some argue that these different opinions about the causes of boating and water accidents illustrate the necessity of providing a mechanism for the continuous study of marine accidents and the effects that State policies and programs have on promoting marine safety.

CONTENT

Senate Bill 5 (S-4)

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 registration of motorboat repair facilities and impose a registration fee that ranged from \$50 to \$300, depending upon the gross income of the facility.
- Require that specialty mechanics and registered facilities be regulated in the same manner as provided in rules promulgated under the Motor Vehicle Service and Repair Act.
- 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/Certification

The bill would prohibit a person, partnership, corporation, or other legal entity from engaging in the business or activity of a motorboat repair facility unless the facility was registered with the Department of State, except as otherwise exempted by the Act or practice. Also, 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. "Motorboat repair facility" would mean a person, partnership, corporation, or other legal entity that engages in the business of performing, or employing one or more motorboat mechanics who perform maintenance, diagnosis, or repair service on a motor or motorboat. "Motorboat mechanic" would mean a person who, for compensation, repairs motorboats, if the repair activity includes the reconditioning, replacement, adjustment, or significant alteration of the operating condition of a motorboat. A "specialty mechanic" would be a motorboat mechanic who is qualified in one or more of the following specific repair categories: engine; drive train; propulsion unit; propulsion unit controls; electrical, fuel, and 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 engages only in the business of repairing the motorboats of a single commercial or industrial establishment or governmental agency, or two or more

OVER

S.B. 5, 371, & 372

establishments related by common ownership or corporate affiliation.

- A person repairing his or her own or a family member's motorboat.
- A business that does not diagnose the operation of a motorboat, does not remove parts from a motorboat to be remachined, and does not install finished machined or remachined parts on a motorboat.

In addition, the Act would not apply to a marine fuel station or to a person who is a specialty mechanic or motorboat mechanic in the full-time employ of a motorboat or marine equipment manufacturer.

Effective December 31, 1988, the bill would require each motorboat repair facility to employ at least one specialty mechanic certified in each category of repair that the facility provides. Each repair facility would have to have at least one specialty mechanic for every six motor boat mechanics it employed. After January 1, 1989, any work concerning a specific repair category performed by a noncertified mechanic would have to be inspected and approved by a specialty mechanic certified in the pertinent specialty.

After December 31, 1988, 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 rights to have work performed by a specialty mechanic.

Administration The Secretary of State would be required to administer the proposed Act, and the Department would have to do all of the following:

- Certify specialty mechanics.
- Register facilities subject to the Act.
- Keep an accurate listing of each certified specialty mechanic.
- Engage in a program to inform the public of its rights and remedies under the Act.
- Collect a \$10 fee for each certification examination.
- Establish procedures for receiving complaints of alleged violations.
- Promulgate rules and inform registered facilities of rules, disciplinary hearings, orders, and suspensions or revocations.

To become certified as a specialty mechanic, a person would have to pass an examination approved by the Department as an adequate test of the person's ability to perform certain types of motorboat repair. Examinations for certification could be written or oral, and substantially equivalent training received from an educational program offered through the motorboat manufacturing industry or an educational establishment could be substituted for an examination. Before a person engaged in employment as a specialty mechanic, the person would have to receive a certificate for that employment from the Department.

In addition to providing for the certification and training of mechanics, the Department would be responsible for registering and regulating repair facilities. The bill specifies the information pertaining to repair facilities that would have to be disclosed on a registration 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 registered 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 yearly fee for registering 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. 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 registration would be 1-1/2 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 \$10 annually, and the renewal fee would be \$15 for an expired certificate.

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 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 registration 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.
- Made unnecessary or unauthorized repairs.
- Refused to honor warranties.
- 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.
- Been convicted of a violation of the proposed Act.
- Used the waiver of liability provision in an attempt to evade the Act.

The Department would have to compile a list of facilities or mechanics who had been found to have violated the Act after having had an opportunity for a hearing. The list would be a public record.

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 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.
- Resolve disputes between parties arising from violations.
- 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 without a registration or certificate, or engaged in an act in violation of the Act, would be barred from bringing an action on a contract or for the collection of compensation for work performed or materials or parts provided to any person. 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 unregistered 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. Additionally, the bill would make 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 or to approve repairs, in advance, up to a specific cost.

Upon return of a repaired motorboat, a facility would have to give a customer a statement of needed repairs, repairs requested or authorized by the customer, estimated repair costs, actual costs, repairs or services performed, and a certification that the repairs were completed properly or a detailed explanation of an inability to do so. The bill also would establish a customer's right to see or receive replaced parts.

Senate Bill 371 (S-2)

The bill would amend the Marine Safety Act to:

- Create the Marine Safety Education Commission in the Department of Natural Resources and establish its membership.
- Require the Commission to review boating accidents and study marine safety education programs.
- Require the Department of Natural Resources to do all things necessary to conduct a comprehensive boating safety program.
- Increase the distance a vessel must be operated from a bouyed diver's flag.
- Establish a \$3 boat registration fee.
- Provide for violators to be taken before a district court or a magistrate, rather than just a magistrate.

The Marine Safety Education Commission would consist of the Director of the DNR, the Director of the Department of State Police and the Superintendent of Public Instruction, or their designees, and 12 members appointed by the Governor with the advice and consent of the Senate, including one individual from a county marine safety division, two individuals from the general public, and one individual recommended by each of the following:

- The Michigan Sheriffs' Association.
- The State Boating Law Administrator.
- The United States Power Squadrons.
- The United States Coast Guard Auxiliary.
- The American National Red Cross.

- The Michigan Boating Industries Association.
- The National Marine Manufacturers Association.
- The Michigan Consumers Council.
- The Michigan Association of Counties

At least four of the appointed members would have to be women.

The Commission would be required to review boating accidents on Michigan waters and study the development of marine safety education programs and other policies of State government relating to marine safety. The Commission would have to report to the DNR on its findings and recommend changes to policies and programs.

Beginning one year after the bill's effective date, a person registering a vessel under the Act, or renewing a registration, would have to pay a marine safety education assessment of \$3. (Note: Vessels must be registered every three years.) This money would have to be forwarded to the treasurer of the county where the person resided if that county operated a marine safety program, and would have to be credited to that program to be used exclusively for educational activities associated with the program. If a county did not have a marine safety program, the money would have to be deposited in the State Treasury to the credit of the Marine Safety Fund.

The DNR would be required to do all things necessary to conduct a comprehensive boating safety program as provided in Federal law, to comply with rules promulgated under the law, and to accept Federal financial assistance as provided in the Act. Currently, the Department is merely permitted to do these things.

The Act requires divers to place a bouy or boat in the water at or near the point of submergence, and the bouy or boat must bear a red flag when actual diving operations are in progress. A vessel cannot be operated within 100 feet of the flag unless it is involved in "tendering the boating operation", and a diver must stay within a surface area of 100 feet of his or her flag. The bill would increase the vessel's distance to 200 feet.

MCL 281.1004 et al.

Senate Bill 372 (S-1)

The bill would amend the Michigan Vehicle Code to provide that the Department of Education would have to require that all driver education courses include at least six hours of instruction in the safe operation of recreational vehicles and watercraft unless the school district in which the course would be offered provided the instruction at an earlier grade level.

MCL 257.811

FISCAL IMPACT

Senate Bill 5 (S-4)

The bill would increase State revenues by an indeterminate amount through the imposition of motorboat repair facility registration fees and specialty mechanic certification fees. The Department of State estimates that this new program would affect approximately 1,000 facilities and cost \$465,000 to administer the first year and \$350,000 the second year. For reference to a similar program, the automotive repair facility/mechanic licensing function of the Department of State costs \$1.7 million annually, serves 12,000 facilities, and is paid for by fees received.

Senate Bill 371 (S-2)

This bill would result in about \$4,000 in expenses to the State for meetings of the Council assuming four meetings per year at a cost of about \$1,000 per meeting. This bill would provide about \$771,000 in revenue per year to counties, assuming all counties would have marine safety programs. The revenue would be derived from a \$3 registration assessment and assumes about 257,000 registrations per year. There are 768,313 vessels currently registered on a three-year cycle. A modest increase in the number of registrations is included in the projection.

Senate Bill 372 (S-1)

The bill would have an indeterminate fiscal impact on the State, and an indeterminate impact on local school districts.

According to Department of Education staff, statewide an average of 130,000 high school sophomores receive between 20 and 30 hours of driver education training (including both classroom and behind-the-wheel) at an average total cost of approximately \$100 per student. Of this \$100, the State of Michigan currently funds approximately \$37.50, and local school districts fund the remainder.

Based on these data, and assuming that the average hourly costs of recreational vehicle and watercraft safety instruction would be the same as current motor vehicle instruction, the statewide costs of six hours of safety instruction for 130,000 sophomores could range between \$2,597,400 and \$3,900,000.

It is important to note, however, that the language in Senate Bill 372 does not currently specify whether the six hours of recreational vehicle and watercraft safety instruction would be in addition to current instructional hours, or included in the current level of instruction. Accordingly, the costs of these new provisions could or could not increase total expenditures.

If it were determined that the provisions of the bill constituted a new activity or service that would require State financing under Article IX, Section 29 of the State Constitution (the "Headlee amendment"), any new cost burden would be to the State rather than to local school districts.

ARGUMENTS

Supporting Argument

The bill would provide three important mechanisms for ensuring public safety on the State's lakes and waterways: mandatory licensing of boat mechanics, mandatory watercraft operation classes, and establishment of a commission of experts to review accident reports and evaluate the State's marine safety policies. Senate Bill 5 (S-4), which parallels much of the auto mechanics licensing Act, would help ensure that anyone servicing and repairing boat engines, electrical systems and other machinery and equipment was competently trained and experienced in such work. Constant, thorough maintenance checks and expert service and repair work are critical to the proper functioning of a boat's power and steering systems and the avoidance of vessel collisions, engine fires, and explosions, yet many boat owners are in such a hurry "to get into the water when the weather turns warm" that they are willing to entrust their vessels to the care of anyone who can get the necessary repair work done quickly and cheaply.

The marine safety courses would not only teach young boaters and potential boaters how to operate a boat or other watercraft safely but also provide watercraft passengers with the information necessary to function as "lookouts" for boat operators. According to the DNR, the absence of a lookout, who could warn the operator of the proximity of swimmers, skiers and floating objects, contributed more often to boating and water accidents in 1985 than either hazardous waters or weather conditions.

Finally, the establishment of a commission of experts to review the causes of boating and water accidents and evaluate marine safety policies would help provide for a comprehensive and coordinated approach to the identification and solution of other marine safety problems.

Opposing Argument

Senate Bill 5 is not necessary. Marina operators are already required by watercraft manufacturers to employ factory-trained and certified mechanics, if the operators wish to perform any type of warranty service on boats or motors, and the bill would not require such mechanics to obtain additional training, education, or experience. The bill would simply create additional paper work and expense for marina operators and mechanics and ultimately the public since the expense would be passed on to the consumer. If the number of boating and water accidents is to be reduced effectively, it is the boat operators, not the mechanics, who should be licensed or certified. According to many safety experts, 95% of all boating accidents occur because boaters do not pay attention to what is going on around them. Indeed, the DNR statistics support the argument that almost 50% of the accidents in 1985 involved collisions between watercraft and between watercraft and floating objects in almost optimal conditions and were caused by reckless operation, excessive speed, or negligence or in-experience on the part of boat operators who had no formal training in the operation of watercraft or in watercraft safety. Faulty equipment was a factor in only 5% of the accidents and the data do not indicate whether the "fault" lay with the mechanic, the manufacturer, or the boat operator.

Response: The consumer protections and State monitoring and policing provisions in Senate Bill 5 are necessary. Although the marinas may employ factory-trained mechanics, there is no guarantee that the mechanics will not at times do substandard work, charge excessive rates, or make unnecessary repairs. Further, there currently is nothing to prohibit a person who has not received any specialized training in watercraft mechanics from making repairs, installing equipment or otherwise servicing watercraft. The sophistication of the work necessary in watercraft repair and servicing, and the extent to which the public can be endangered by shoddy repairs and incompetent servicing, make it imperative that there be some monitoring and regulation of the watercraft mechanic profession and that consumers and the State have some legal recourse against incompetent or unqualified mechanics.

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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.