

Legislative Analysis



OPERATION OF SPORTSCRAFT WITH BAC OF 0.08 GRAMS OR HIGHER

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House Bill 5005

Sponsor: Rep. Sharon Tyler

House Bill 5006

Sponsor: Rep. Tonya Schuitmaker

House Bill 5007

Sponsor: Rep. Andrew Kandrevas

House Bill 5008

Sponsor: Rep. Timothy Bledsoe

Committee: Judiciary

Complete to 9-16-09

A SUMMARY OF HOUSE BILL 5005-5008 AS INTRODUCED 5-26-09

The bills would prohibit a person from operating an ORV or snowmobile with a bodily alcohol level of 0.08 grams or any bodily amount of a Schedule 1 controlled substance or cocaine; increase the length of a license suspension for refusing to submit to a chemical test; and allow for enhanced penalties for multiple violations occurring within any number of years.

The bills would amend various provisions of the Natural Resources and Environmental Protection Act pertaining to the operation of ORVs and snowmobiles to make them conform to recent changes in the drunk driving provisions of the Michigan Vehicle Code.

Currently under the NREPA, it is prohibited to operate an ORV or snowmobile while under the influence of intoxicating liquor or a controlled substance, or both.

House Bill 5005 would amend provisions pertaining to snowmobiles (MCL 324.82101 et al.).

House Bill 5007 would amend provisions pertaining to ORVs (MCL 324.81101 et al.).

House Bills 5006 and 5008 would amend the sentencing guidelines. House Bills 5005, 5007, and 5008 would take effect January 1, 2010.

House Bills 5005 and 5007 would, in general, do the following:

- Replace references to “intoxicating liquor” with “alcoholic liquor” and define that term as it is defined in Section 1d of the Michigan Vehicle Code.

- Prohibit a person from operating an ORV 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. This would be in addition to the current prohibitions on being under the influence of alcohol or a controlled substance, or both, and of operating a vehicle while visibly impaired from the consumption of alcohol or a controlled substance, or both.
- Prohibit the owner or person in charge of an ORV or snowmobile from allowing another person to operate the vehicle or vessel while having a BAC of 0.08 grams or higher or if the person's ability to operate the vehicle or vessel was visibly impaired due to the consumption of alcohol, a controlled substance, or a combination of both. This would be in addition to the current prohibition on being under the influence of alcohol or a controlled substance or both.
- Change all current references to a BAC of 0.10 grams to a BAC of 0.08 grams.
- 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, he or she is presumed not to be impaired. A BAC of more than 0.07 grams but less than 0.10 is presumed to be impaired. A BAC of 0.10 or more is presumed to be under the influence. (Identical presumptions were eliminated from the Michigan Vehicle Code by Public Act 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.
- For both ORVs and snowmobiles, make it a state civil infraction punishable by a civil fine of not more than \$500 for refusing to submit to a preliminary chemical breath analysis upon a lawful request by a peace officer. (Currently, it is a misdemeanor offense for a person operating a snowmobile to refuse a breathalyzer test. It is a state civil infraction for an ORV operator to refuse the test punishable by a civil fine of not more than \$100.)
- Increase the suspension of a person's right to operate an ORV 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.
- For ORV and snowmobile violations involving alcohol and/or controlled substances, allow enhanced penalties, suspension of the right to operate an ORV for one to two years, and permanent revocation of the right to operate a snowmobile upon a third or subsequent conviction regardless of the years elapsed since the previous convictions (currently, these penalties are triggered when a person had two or more convictions in the previous 10 years).

- Add – to a provision stating that statutory provisions relating to chemical testing do not limit the introduction into evidence of other competent evidence bearing upon the question of whether a person was impaired by, or under the influence of, alcohol and/or a controlled substance – that the person had in his or her body any amount of a Schedule 1 controlled substance or cocaine.

Additional provisions regarding ORVs

- 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 5007 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.
- Repeal Section 81135, which prohibits the operation of an ORV while visibly impaired due to consumption of alcoholic liquor and/or a controlled substance, and instead place the prohibition within Section 81134. A violation would be a misdemeanor punishable by up to 93 days imprisonment and/or a maximum fine of \$300, together with the costs of prosecution. A finding of guilty would be permissible under this provision if a person were charged with operating an ORV while under the influence of alcohol or a controlled substance, a BAC of 0.08 or higher, or with any bodily amount of a Schedule 1 drug or cocaine. A person convicted of operating an ORV while visibly impaired would be prohibited from operating an ORV for between 93 days (increased from a minimum of 90 days) and a year for a first offense, six months to eighteen months for a second offense, and one to two years for a third or subsequent offense.
- Maintain the penalty for an owner or person in charge who allowed a person to operate an ORV when intoxicated, under the influence, or visibly impaired by drugs or alcohol as a misdemeanor punishable by imprisonment of not more than 93 days or a fine of not less than \$100 or more than \$500, or both. However, the requirement for the court to order the person convicted to pay the costs of prosecution would be eliminated.
- Add an arrest or prosecution for murder to provisions relating to chemical testing of a person arrested or prosecuted for negligent homicide or manslaughter while under the influence, having a BAC of 0.08 or higher, or having any bodily amount of a Schedule 1 drug or cocaine,.

House Bills 5006 and 5008

Both bills would amend the same section of the Code of Criminal Procedure (MCL 777.13g). The bills would amend existing sentencing guidelines pertaining to operating ORVs and snowmobiles while under the influence causing death or serious impairment,

and also for third or subsequent offenses, to include the elements of being impaired or with the presence of a controlled substance.

House Bill 5006 is tie-barred to House Bill 5005; House Bill 5008 is tie-barred to House Bill 5007.

BACKGROUND INFORMATION:

Similar packages of legislation were passed by the House but died in the Senate in the 2003-2004 and 2005-2006 legislative sessions.

FISCAL IMPACT:

House Bills 5005 and 5007 would have an indeterminate fiscal impact on the judicial branch. To the extent that the bills increased the number of misdemeanor or felony cases, courts would see an increase in costs associated with the judicial process. Through the defendant's payment of court costs, the court would likely recoup many of the increased costs associated with case disposition.

Any increase in penal fine revenues could benefit local libraries, which are the constitutionally-designated recipients of such revenues.

House Bills 5005 and 5007 would have no fiscal impact on the Secretary of State.

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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.