

DRUNK DRIVING REVISIONS

House Bill 5120 as passed by the House
Sponsor: Rep. William Van Regenmorter

House Bill 5130 as passed by the House
Sponsor: Rep. Andrew Meisner

House Bill 5131 as passed by the House
Sponsor: Rep. Mike Nofs

House Bill 5132 as passed by the House
Sponsor: Rep. Paul Condino

Committee: Criminal Justice

Second Analysis (1-14-04)

THE APPARENT PROBLEM:

Public Act 61 of 2003, which took effect on October 1st, amended the Michigan Vehicle Code to establish a blood alcohol content of 0.08 grams as the *per se* level for drunk driving. The act also created a new offense category prohibiting a person from operating a vehicle with any amount of a Schedule 1 drug or cocaine in his or her body [the new Section 625(8)]. The penalties for a violation of Section 625(8) are the same as for operating while intoxicated (0.08 BAC or higher). Apparently, in implementing the new changes, the Secretary of State noticed inconsistencies in the way the vehicle code treats various drunk driving offenses. Also, some felt that the definition of "alcohol" needs to be broadened by going beyond the definition in the Michigan Liquor Control Code.

In a related matter, 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. Legislation has, therefore, been offered to conform these statutes to the recent changes in the vehicle code, and to address the inconsistencies pertaining to drunk driving offenses in the vehicle code.

THE CONTENT OF THE BILLS:

The bills would amend various acts so that provisions relating to the operation of motor vehicles, ORVs, snowmobiles, and watercraft would be consistent

with recent changes in the drunk driving laws. Specifically, the bills would do the following:

House Bill 5120. The bill would amend the Michigan Vehicle Code (MCL 257.310d et al.) to include a reference to Section 625(8) – no bodily amount of a Schedule 1 drug or cocaine - in various provisions that reference a violation of the drunk driving provisions. In addition, the bill would redefine the term "alcoholic liquor". Currently, the vehicle code uses the term as defined by the Michigan Liquor Control Code – "any spirituous, vinous, malt, or fermented liquor, liquids and compounds, whether or not medicated, proprietary, patented, and by whatever name called, containing 1/2 of 1% or more of alcohol by volume which are fit for use for beverage purposes as defined and classified by the commission according to alcoholic content as belonging to 1 of the varieties defined in this chapter." The bill would instead define "alcoholic liquor" to mean "any liquid or compound, whether or not medicated, proprietary, patented, and by whatever name called, containing any amount of alcohol, including any liquid or compound described in Section 105(2)" of the liquor code.

Further, the bill would add references to the Dominion of Canada to reflect that country's practice of treating drunk driving as a federal offense. The bill would also make a number of corrections to citations and would add missing references to violations of Section 625(7) – committing a drunk driving offense while a person less than 16 years of

age was in the vehicle - to several drunk driving provisions.

House Bills 5130-5132. The bills would amend various provisions of the Natural Resources and Environmental Protection Act pertaining to the operation of ORVs, watercraft, 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, watercraft, or snowmobile while under the influence of alcohol or a controlled substance, or both. The bills would, in general, do the following:

- Prohibit a person from operating an ORV, watercraft, or snowmobile with a bodily alcohol content 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 intoxicating liquor or a controlled substance or both and of operating a vehicle or vessel while visibly impaired from the consumption of intoxicating liquor or a controlled substance or both.

- Prohibit the owner or person in charge of an ORV, watercraft, or snowmobile from allowing another person to operate the vehicle or vessel while having a bodily alcohol content of 0.08 grams or higher; any bodily amount of a Schedule 1 controlled substance or cocaine; or while 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 intoxicating liquor or a controlled substance or both.

- Change all current references to a BAC of 0.10 to by referring instead to a BAC of 0.08.

- 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 contained in the Michigan Vehicle Code were recently eliminated by Public Act 61 of 2003.)

- Replace references to "intoxicating liquor" with "alcoholic liquor" and define that term as it would be defined by House Bill 5120.

- 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 a snowmobile, ORV, or watercraft 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.

- 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 5130 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 is identical to provisions pertaining to snowmobiles and watercrafts.

House Bill 5130 would amend provisions pertaining to ORVs (MCL 324.81134 and 324.81136). House Bill 5131 would amend provisions pertaining to watercraft (MCL 324.80171 et al.). House Bill 5132 would amend provisions pertaining to snowmobiles (MCL 324.82127 et al.).

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, House Bill 5120, which would make a number of mostly technical amendments to the Michigan Vehicle Code, would have no fiscal impact on the state or on local units of government. (10-6-03)

Regarding House Bills 5130-5132, there are no statewide data available to indicate how the bills might affect numbers of convictions for the various offenses. Therefore, the fiscal impact on state and local correctional systems would depend on how the bills affected charging, plea, and sentencing decisions regarding the offenders involved. (10-29-03)

ARGUMENTS:

For:

Historically, the same rules 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, which took effect earlier this month, it is now necessary to make changes to the statutes that regulating these recreational vehicles and vessels.

House Bill 5130 would also 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.

For:

House Bill 5120 would amend the vehicle code to broaden the definition of alcohol in relation to drunk driving offenses. Currently, the code defines alcohol to mean that term as defined by the liquor code. While it is proper for regulatory purposes to narrowly define alcohol in the liquor code, a broader interpretation is more suitable for the vehicle code since the purpose is to protect the public from individuals who would use substances that make the operation of a motor vehicle dangerous.

Against:

Some feel that the only reason for House Bills 5130-5132 is to make statutory provisions regarding the use of alcohol or controlled substances identical for recreational vehicles and motor vehicles. Currently, some level of impairment must be demonstrated, but if enacted, the bills would adopt the same *per se* level of a 0.08 BAC as does the vehicle code, which was only amended because a federal mandate would have cut off federal road money. Unless a risk to the public safety is documented, the levels should be left the same.

Response:

First of all, safety would necessitate 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. Also, it is well documented that a BAC of 0.08 and over results in significant impairment of judgment and motor skills. An impaired operator is dangerous whether driving a snowmobile or a car. Further, statistics support the assumption that many lives will be protected by the lower BAC levels. The federal mandate may have forced the legislature to consider the issue sooner than it would have, but making 0.08 BAC the *per se* level for drunk driving is still good public policy.

POSITIONS:

A representative of the Michigan Sheriffs Association indicated support for the bills. (10-21-03)

A representative of the National Marine Manufacturers Association indicated support for House Bill 5131. (10-21-03)

A representative of the Michigan Licensed Beverage Association (MLBA) indicated opposition to the bills. (10-21-03)

Analyst: S. Stutzky

■ 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.