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House Bills 4441 and 4442 (as passed by the House)  
House Bill 4443 (Substitute H-1 as passed by the House)  
House Bill 4444 (as passed by the House)  
House Bill 4445 (Substitute H-3 as passed by the House)  
House Bill 4446 (as passed by the House)  
Sponsor: Representative Matt Lori (H.B. 4441 & 4442)  
Representative Dave Pagel (H.B. 4443 & 4444)  
Representative Andrew Kandrevas (H.B. 4445 & 4446)  
House Committee: Criminal Justice  
Senate Committee: Judiciary

Date Completed: 12-9-14

## **CONTENT**

**House Bills 4441, 4443 (H-1), and 4445 (H-3) would amend Parts 801 (Marine Safety), 821 (Snowmobiles), and 811 (Off-Road Recreation Vehicles), respectively, of the Natural Resources and Environmental Protection Act (NREPA) to revise provisions regarding operating violations involving the use of alcohol or a controlled substance. Specifically, the bills would do the following:**

- Lower the prescribed bodily alcohol content limit from 0.10 gram to 0.08 gram.
- Refer to motorboats rather than vessels in provisions of Part 801 regarding operating violations.
- Prohibit a person from operating a motorboat, snowmobile, or off-road recreation vehicle (ORV) with any amount of certain controlled substances in his or her body.
- Prohibit a person younger than 21 from operating with any bodily alcohol content.
- Increase penalties for alcohol and controlled substance operating violations if a person younger than 16 were occupying the motorboat, snowmobile, or ORV.
- Revise the penalties for these operating violations.
- Eliminate certain presumptions regarding a defendant based on the results of a chemical analysis.
- Increase the mandatory operating ban for a person who refuses to submit to a chemical test.
- Provide for review of a final determination of the Secretary of State regarding an ORV operating ban.

**House Bills 4442, 4444, and 4446 would amend the Code of Criminal Procedure to revise the sentencing guidelines to reflect the changes proposed by House Bills 4441, 4443 (H-1), and 4445 (H-3).**

House Bill 4442 is tie-barred to House Bill 4441 and 4445. House Bill 4444 is tie-barred to House Bill 4443. House Bill 4446 is tie-barred to House Bill 4445.

House Bills 4441, 4443 (H-1), and 4445 (H-3) are described in more detail below.

## **House Bill 4441**

### Two-Year Operating Ban

Under Part 801, in addition to any other penalty, if a person is convicted of operating a vessel while under the influence of alcoholic liquor or narcotic drugs, the court may deny him or her the right to operate any vessel on any of the waters of the State for up to two years. The bill would refer to a motorboat rather than a vessel in this provision. ("Vessel" means every description of watercraft used or capable of being used as a means of transportation on water. "Motorboat" means a vessel propelled wholly or in part by machinery.)

The bill also would apply this provision to a person who was convicted of operating a motorboat with any amount of a controlled substance listed in Schedule 1 under Section 7212 of the Public Health Code or a rule promulgated under that section, or of a controlled substance described in Section 7214(a)(iv) of the Health Code, in his or her body.

### Operating Under the Influence/While Impaired

Part 801 prohibits a person from operating a vessel if either of the following applies:

- The person is under the influence of alcoholic liquor and/or a controlled substance.
- The person has a blood alcohol content (BAC) of 0.10 gram or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.

Part 801 also prohibits the owner of a vessel or a person in charge or in control of a vessel from authorizing or knowingly permitting the vessel to be operated by a person to whom either of the above criteria applies.

The bill would refer to a motorboat rather than a vessel, and also would lower the BAC level from 0.10 gram to 0.08 gram. In addition, the bill would extend these prohibitions to a person who had in his or her body any amount of a controlled substance listed in Schedule 1 under the Health Code or a related rule, or of cocaine.

Also, the bill would prohibit the owner of a motorboat or a person in charge or in control of a motorboat from authorizing or knowingly permitting it to be operated by a person whose ability to operate it was visibly impaired due to the consumption of alcoholic liquor and/or a controlled substance.

### Operation Causing Death

A person who operates a vessel in violation of the prohibition against operating under the influence, in excess of the BAC limits, or while visibly impaired and causes the death of another person is guilty of a felony punishable by imprisonment for a maximum of 15 years and/or a fine of at least \$2,500 and not more than \$10,000. If the person causes serious impairment of a body function, he or she is guilty of a felony punishable by imprisonment for a maximum of five years and/or a fine of at least \$1,000 and not more than \$5,000. The bill would refer to a motorboat rather than a vessel in these provisions. Additionally, these penalties also would apply to a person who was operating while visibly impaired.

### Operation under Age 21

The bill would prohibit a person younger than 21 years old, whether licensed or not, from operating a motorboat on the waters of the State if he or she had any bodily alcohol content. "Any bodily alcohol content" would mean either of the following:

- An alcohol content of at least 0.02 gram but less than 0.08 gram per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.
- Any presence of alcohol within a person's body resulting from the consumption of alcoholic liquor, other than consumption as part of a generally recognized religious service or ceremony.

#### Operation with Passenger under Age 16

The bill would prohibit a person, whether licensed or not, from violating the prohibitions against operating a motorboat while under the influence or above the BAC threshold, while visibly impaired, and causing death or serious impairment of a body function while another person who was younger than 16 was in the motorboat. A person under the age of 21 could not operate a motorboat with any BAC if another person under the age of 16 were in the boat.

#### Penalties

Operating under the Influence. Generally, if a person is convicted of violating the prohibition against operating while under the influence or in excess of the BAC limits, the person is guilty of a misdemeanor punishable by one or more of the following:

- A maximum of 45 days of community service.
- Up to 93 days' imprisonment.
- A fine of at least \$100 and not more than \$500.

If the violation occurs within seven years of a prior conviction, the person must be sentenced to both a fine of at least \$200 and not more than \$1,000 and either of the following:

- Community service for at least 10 days and not more than 90 days, and discretionary imprisonment for up to one year.
- Imprisonment for at least 48 consecutive hours and not more than one year, and discretionary community service for a maximum of 90 days.

If the violation occurs within 10 years of two or more prior convictions, the person is guilty of a felony and must be sentenced to imprisonment for at least one year and not more than five years, and/or a fine of at least \$500 and not more than \$5,000. The bill would eliminate the reference to the 10-year window and provide that these penalties would apply regardless of the number of years that had elapsed since any prior conviction.

Under the bill, all of these penalties also would apply to a person who operated a motorboat with any amount of a prohibited controlled substance in his or her body.

Operating while Visibly Impaired. Part 801 prescribes penalties for a person convicted of operating a motorboat while visibly impaired. If a violation occurs within 10 years after two or more prior convictions, the person must be sentenced to both a fine of at least \$200 and not more than \$1,000, and either of the following:

- Community service for at least 10 days and not more than 90 days, and discretionary imprisonment for up to one year.
- Imprisonment for a maximum of one year and discretionary community service for not more than 90 days.

The bill would eliminate the reference to the 10-year window and provide that these penalties would apply regardless of the number of years that had elapsed since any prior conviction.

Operating under Age 21 with any BAC. If a person were convicted of violating the bill's prohibition against operating a motorboat under the age of 21 with any BAC, he or she would be guilty of a misdemeanor punishable by up to 360 hours of community service and/or a maximum fine of \$250.

If the violation occurred within seven years of one or more prior convictions, including a prior conviction for this particular offense, he or she could be sentenced to one or more of the following:

- Up to 60 days of community service.
- A maximum fine of \$500.
- Imprisonment for up to 93 days.

In addition, the court could order the person to pay the costs of the prosecution.

A person sentenced to perform community service could not receive compensation and would have to reimburse the State or appropriate local unit of government for the cost of supervision incurred as a result of the person's activities in that service.

Operating with Passenger under 16. A person who violated the prohibition against operating under the influence, operating while visibly impaired, or causing the death or serious impairment of a body function with a person younger than 16 in the motorboat would be guilty of a misdemeanor and would have to be sentenced to pay a fine of at least \$200 and not more than \$1,000 and to one or more of the following:

- Imprisonment for at least five days and not more than one year, at least 48 hours of which would have to be served consecutively.
- Community service for at least 30 days and not more than 90 days.

The term of imprisonment could not be suspended.

If the violation occurred within seven years of a prior conviction or after two or more prior convictions, regardless of the number of years that had elapsed, the person would be guilty of a felony and would have to be sentenced to pay a fine of at least \$500 and not more than \$5,000, and to either of the following:

- Imprisonment under the jurisdiction of the Department of Corrections for at least one year and not more than five years.
- Probation with imprisonment in the county jail for at least 30 days and not more than one year and community service for at least 60 days and not more than 180 days.

At least 48 hours of the imprisonment in the county jail would have to be served consecutively. This term of imprisonment could not be suspended.

A person under the age of 21 who violated the bill's prohibition against operating a motor boat with any BAC while a person under the age of 16 was on the boat would be guilty of a misdemeanor and could be sentenced to one or more of the following:

- Community service for up to 60 days.
- A maximum fine of \$500.
- Imprisonment for up to 93 days.

If the violation occurred within seven years of a prior conviction or after two or more prior convictions, regardless of the number of years that had elapsed, the person would have to be sentenced to pay a fine of at least \$200 and not more than \$1,000 and to one or more of the following:

- Imprisonment for at least five days and not more than one year, 48 hours of which would have to be served consecutively.
- Community service for at least 30 days but not more than 90 days.

The term of imprisonment could not be suspended.

In addition, the court could order the person to pay the costs of the prosecution. A person sentenced to perform community service could not receive compensation and would have to reimburse the State or appropriate local unit of government for the cost of supervision incurred as a result of the person's activities in that service.

#### Arrest & Reasonable Cause

Under Part 801, a peace officer may arrest a person without a warrant if the officer has reasonable cause to believe that the person was, at the time of an accident, the operator of a vessel involved in the accident while in violation of the prohibition against operating under the influence, operating while visibly impaired, or doing either and causing death or serious impairment of a body function or a substantially corresponding local ordinance. Under the bill, this provision also would apply in the case of a person who violated either of the bill's prohibitions against operating a motorboat with a passenger under the age of 16.

If a peace officer has reasonable cause to believe that a person was operating a vessel and may have affected his or her ability to operate it by the consumption of alcoholic liquor, the officer may require the person to submit to a preliminary chemical breath analysis. A person who refuses to submit to a preliminary analysis upon request is responsible for a State civil infraction and may be ordered to pay a maximum civil fine of \$500. The bill would refer to a person who was operating a motorboat, rather than a vessel.

#### Evidence of Impairment or Influence of Alcohol/Controlled Substance

Part 801 contains provisions related to a chemical test and analysis of a person's blood, urine, or breath, other than a preliminary chemical breath analysis. The provisions related to chemical testing do not limit the introduction of any other competent evidence bearing upon the question of whether a person was impaired by, or under the influence of, alcoholic liquor and/or a controlled substance, or whether the person had a blood alcohol content of 0.10 gram or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine. The bill would refer to a BAC of 0.08 rather than 0.10. The bill also would refer to evidence regarding whether the person had any amount of the prohibited controlled substances in his or her body.

#### Presumptions

Except as otherwise provided, the amount of alcohol in the operator's blood at the time alleged as shown by a chemical analysis gives rise to the following presumptions:

- If the defendant had an alcohol content of not more than 0.07 gram, it must be presumed that his or her ability to operate a vessel was not impaired due to the consumption of, and he or she was not under the influence of, intoxicating liquor.
- If the defendant had an alcohol content of more than 0.07 gram but less than 0.10 gram, it must be presumed that his or her ability to operate a vessel was impaired due to the consumption of intoxicating liquor.

- If the defendant had an alcohol content of at least 0.10 gram, it must be presumed that the defendant was under the influence of intoxicating liquor.

The bill would delete these presumptions.

#### Consent to Chemical Tests

Part 801 provides that a person who operates a vessel on the waters of the State is considered to have given consent to chemical tests of his or her blood, breath, or urine for the purpose of determining the amount of alcohol and/or presence of a controlled substance in his or her blood in any of the following circumstances:

- The person is arrested for a violation of the prohibition against operating under the influence, operating while visibly impaired, or doing either and causing death or serious impairment of a body function, or a substantially corresponding local ordinance.
- The person is arrested for negligent homicide, manslaughter, or murder resulting from the operation of a vessel, and the peace officer had reasonable grounds to believe that the person was operating the vessel while impaired by and/or under the influence of intoxicating liquor or a controlled substance, or while having a BAC above the limits prescribed in the Part 801.

The bill would refer to a motorboat rather than a vessel in these provisions. Additionally, the bill would include a person arrested for either of the violations involving operation with a person under the age of 16 in the boat, among the circumstances under which an operator is considered to have consented to chemical tests. With regard to the second circumstance, the bill would refer to a person operating a vessel in violation of any of the Part 801 prohibitions involving alcohol and controlled substances.

If a person refuses to submit to a chemical test, the peace officer immediately must notify him or her in writing that within 14 days of the date of notice the person may request a hearing, and that failure to request a hearing will result in issuance of an order that the person not operate a vessel on Michigan waters. If the person does not request a hearing within 14 days, the Secretary of State (SOS) must issue an order that he or she not operate a vessel on Michigan waters for six months or, for a second or subsequent refusal within seven years, for one year. The SOS must issue a similar order after a hearing if the person who requested it does not prevail. The bill would refer to a motorboat rather than a vessel. Additionally, the bill would increase the operating bans from six months and one year, to one year and two years, respectively.

#### **House Bill 4443 (H-1)**

The bill would enact in Part 821 a number of revisions similar to those proposed in Part 801 by House Bill 4441. The revisions, which would apply to the operation of a snowmobile, pertain to the following:

- Operating under the influence, in excess of the BAC limits, or while visibly impaired.
- Causing the death of another person while operating under such conditions.
- Controlled substance and alcohol violations with a passenger younger than 16 occupying the snowmobile.
- Penalties for these operating violations.
- Arrests, reasonable cause, and chemical tests.
- Other evidence related to a person's BAC or impairment.
- Presumptions based on the BAC shown by a chemical test.
- Consent to and refusal of a chemical test.

With regard to the operation of a snowmobile by a person younger than 21 years old, "any bodily alcohol content" would mean either of the following:

- Until October 1, 2018, an alcohol content of at least 0.02 gram but less than 0.08 gram per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.
- Beginning October 1, 2018, an alcohol content of at least 0.02 gram but less than 0.10 gram per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.
- Any presence of alcohol within a person's body resulting from the consumption of alcoholic liquor, other than consumption as part of a generally recognized religious service or ceremony.

### **House Bill 4445 (H-3)**

The bill would enact in Part 811 with regard to the operation of an ORV many of the revisions proposed by House Bill 4441 concerning a motorboat. The provisions of House Bill 4445 (H-3) that differ from House Bill 4441 are described below.

#### Operating under the Influence/while Impaired

Part 811 prohibits a person from operating an ORV if either of the following applies:

- The person is under the influence of alcoholic liquor and/or a controlled substance.
- The person has a BAC of 0.10 gram or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.

The bill would lower the BAC limit from 0.10 gram to 0.08 gram. In addition, the bill would extend this prohibition to a person who had in his or her body any amount of the controlled substances specified in House Bill 4441.

Part 811 also prohibits the owner of or a person in charge or in control of an ORV from authorizing or knowingly permitting it to be driven or operated by a person who is under the influence of alcoholic liquor and/or a controlled substance. Under the bill, the owner or person in charge also could not authorize or permit the ORV to be operated by a person with an alcohol content of at least 0.08 gram or a person whose ability to operate the ORV was visibly impaired due to the consumption of alcoholic liquor and/or a controlled substance.

#### Penalties

Operating under the Influence/Authorizing Operation. A person who is convicted of violating the prohibition against operating under the influence or in excess of the BAC limits, or allowing another person to operate under those conditions, is guilty of a misdemeanor punishable by imprisonment for up to 93 days and/or a fine of \$100 to \$500, as well as the costs of prosecution.

For a second conviction of operating under the influence or in excess of the BAC limits within a seven-year period, a person is guilty of a misdemeanor punishable by imprisonment for up to one year and/or a maximum fine of \$1,000. For a third or subsequent conviction, a person is guilty of a felony and must be sentenced to imprisonment for at least one year but not more than five years and/or a fine of \$500 to \$5,000.

The bill would delete all of these penalties. Instead, a person who violated the prohibition against operating under the influence or in excess of the BAC limits would be guilty of a misdemeanor punishable by one or more of the following:

- Up to 360 hours of community service.
- Imprisonment for up to 93 days.
- A fine of at least \$100 and not more than \$500.

If the violation occurred within seven years of a prior conviction, the person would have to be sentenced to pay a fine of at least \$200 and not more than \$1,000, and to one or more of the following:

- Imprisonment for at least five days but not more than one year, at least 48 hours of which would have to be served consecutively.
- Community service for 30 to 90 days.

If the violation occurred after two or more prior convictions, regardless of the number of years that had elapsed since any prior conviction, the person would be guilty of a felony and would have to be sentenced to pay a fine of at least \$500 and not more than \$5,000, and to either of the following:

- Imprisonment under the jurisdiction of the Department of Corrections for at least one year and not more than five years.
- Probation with imprisonment in the county jail for at least 30 days and not more than one year, and community service for at least 60 days and not more than 180 days.

At least 48 hours of the imprisonment would have to be served consecutively. A term of imprisonment could not be suspended.

A person who was convicted of permitting another person to operate an ORV while under the influence or in excess of the BAC limits would be guilty of a misdemeanor punishable by imprisonment for up to 93 days and/or a fine of at least \$100 and not more than \$500.

Operating while Visibly Impaired. Section 81135, which the bill would repeal, provides that a person convicted of operating an ORV while visibly impaired is guilty of a misdemeanor punishable by imprisonment for up to 93 days and/or a maximum fine of \$300, as well as the costs of prosecution. If the person has at least one prior conviction, he or she is guilty of a misdemeanor punishable by imprisonment for up to one year and/or a maximum fine of \$1,000. Additionally, for any violation under this section, the court may order up to 12 days of community service.

Under the bill, the same penalties that would apply to operating a motorboat or snowmobile under House Bill 4441 and House Bill 4443 (H-1), respectively, would apply to the operation of an ORV while visibly impaired.

#### Court Order Banning ORV Operation

As part of a sentence for a violation of the prohibition against operating an ORV under the influence, in excess of the BAC limits, or with a forbidden controlled substance in one's body, the court would have to do the following:

- If the court found that the person had no prior convictions within seven years, order that the person not operate and ORV for a period of at least six months and not more than two years.
- If the court found that the person had at least two prior convictions within a 10-year period, order that the person not operate an ORV for a period of at least one year and not more than two years.

As part of the sentence for a violation of the prohibition against operating an ORV while visibly impaired, the court would have to do one of the following:



- If the court found that the person had no prior convictions within seven years, order that the person not operate an ORV for at least 90 days and not more than one year.
- If the court found that the person had one or more prior convictions within seven years, order that the person not operate an ORV for a period of at least six months and not more than 18 months.
- If the court found that the person had at least two prior convictions within 10 years, order that the person not operate an ORV for a period of at least one year and not more than two years.

#### Consent to Chemical Test

Under the bill, if a person who refused to submit to a chemical test requested a hearing and prevailed, the peace officer who filed the report of the person's refusal to submit to the test could, with the consent of the prosecuting attorney, file a petition in the circuit court in the county in which the arrest was made to review the determination of the hearing officer (as described below).

#### Review of SOS Determination

Under the bill, a person who was aggrieved by a final determination of the SOS under Part 811 could petition for a review in the circuit court in the county where he or she was arrested. A peace officer who was aggrieved by a determination of a hearing officer in favor of a person who requested a hearing could, with the consent of the prosecuting attorney, petition for review of the determination in the circuit court in the county where the arrest was made. In either case, the petition would have to be filed within 63 days after the determination was made; the court, however, could allow the petition to be filed within 182 days for good cause shown.

Except as otherwise provided, the circuit court would have to enter an order scheduling a hearing for a date that was not more than 63 days after the date of the order. The order, a copy of the petition, and all supporting affidavits would have to be served on the SOS's office in Lansing at least 20 days before the hearing date. If the person were seeking a review of the record, the service upon the SOS would have to be made at least 50 days in advance.

The court could take testimony and examine all the facts and circumstances incident to the order that the person not operate an ORV in Michigan. The court could affirm, modify, or set aside the order. The order of the court would have to be duly entered, and the petitioner would have to file a certified copy with the SOS's Lansing office within seven days after entry.

Except as otherwise provided, in reviewing a determination, the court would have to confine its consideration to a review of the record to determine whether the hearing officer properly determined the enumerated issues.

In reviewing a determination resulting in issuance of an order, the court would have to confine its consideration to a review of the record. The court would have to set aside the SOS's determination only if substantial rights of the petitioner had been prejudiced because the determination was any of the following:

- In violation of the U.S. or Michigan Constitution or a statute.
- In excess of the SOS's statutory authority or jurisdiction.
- Made upon unlawful procedure resulting in material prejudice to the petitioner.
- Not supported by competent, material, and substantial evidence on the whole record.
- Arbitrary, capricious, or clearly an abuse or unwarranted exercise of discretion.

-- Affected by other substantial and material error of law.

### Refusal to Submit to Chemical Breath Test

Under Part 811, a person who refuses to submit to a preliminary chemical breath analysis upon a lawful request by a peace officer is responsible for a State civil infraction and may be ordered to pay a civil fine of up to \$100. The bill would increase the maximum fine to \$500.

MCL 324.80101 et al. (H.B. 4441)  
777.13g (H.B. 4442)  
324.82101 et al. (H.B. 4443)  
777.13g (H.B. 4444)  
324.81101 et al. (H.B. 4445)  
777.13g (H.B. 4446)

Legislative Analyst: Julie Cassidy

### **FISCAL IMPACT**

The bills could result in a fiscal cost to State and local government. Under the current offense penalties, since 2009 there have been three felony sentences to prison out of a total of 10 convictions. Since the bills would add language to felony penalties regarding bodily alcohol content and other controlled substances, it is unknown how many convictions would have qualified under the proposed definitions. If the revisions to the felony guidelines resulted in an increase in total offenses, there could be an increase in incarceration costs to the State. Currently, for felony convictions, in the short term, the marginal cost to the State is approximately \$4,100 per additional prisoner per year. Over the long term, the marginal cost to the State is approximately \$31,100 per additional prisoner per year. To the extent that the proposed definitions resulted in an increase in caseload, the costs to local courts and law enforcement could increase. An increase in fine revenue would benefit public libraries.

Fiscal Analyst: John Maxwell