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SFA



BILL ANALYSIS

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Senate Bill 865 (as enrolled)
Senate Bill 830 (as enrolled)
Senate Bill 897 (as enrolled)
Sponsor: Senator Jon Cisky (S.B. 865 & S.B. 897)
 Senator Walter H. North (S.B. 830)
Senate Committee: Transportation and Tourism
House Committee: Conservation, Environment and Recreation

PUBLIC ACT 263 of 1998
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PUBLIC ACT 264 of 1998

Date Completed: 9-23-98

RATIONALE

Personal watercraft are small vessels, operated by one to three persons who kneel or stand on the hull, that use a motor-driven propeller or an internal combustion engine to power a water jet pump which serves as the primary source of propulsion. These vessels are smaller than most boats, easy to maneuver, and able to travel at speeds of more than 50 miles per hour. Given their design and maneuverability, personal watercraft reportedly have been the fastest growing segment of the recreational boating industry. In 1994, there were 40,000 personal watercraft registered in the State. Three years later, approximately 90,000 personal watercraft were registered, which accounted for 10% of the more than 960,000 registered boats in the State. The increasing number of personal watercraft on State waters has resulted in growing concerns about the safe operation of these craft. The operation of personal watercraft has been regulated under Part 801 (Marine Safety) of the Natural Resources and Environmental Protection Act (NREPA) which, among other things, required operators to wear a personal flotation device, prohibited operation between sunset and sunrise, and established age limits for a person to operate or lease a personal watercraft. Despite these regulations, personal watercraft apparently accounted for 173 of 402 boating accidents reported in the State in 1997. Consequently, some people believed that a more comprehensive approach was needed to regulate the use of these watercraft.

Recently, Public Act 116 of 1998 created the Personal Watercraft Safety Act to establish personal watercraft regulations, as well as training and certification requirements. Additional changes also have been suggested to enhance personal watercraft safety.

CONTENT

Senate Bill 865 amended the Personal Watercraft Safety Act to do the following:

- Require the Department of Natural Resources (DNR) to create and make available to personal watercraft dealers a summary of the marine safety laws pertaining to personal watercraft and a summary of the safety features of personal watercraft.
- Require a personal watercraft dealer to advise a purchaser of the sources of boating safety courses in his or her area, and establish a civil penalty for violations of this requirement.
- Specify that a person is guilty of reckless operation of a personal watercraft if he or she operates a personal watercraft in disregard to the rights or safety of others, or at a rate of speed or in a manner that endangers others.
- Establish misdemeanor penalties for reckless operation of a personal watercraft.
- Permit a court to issue an order prohibiting a person, who recklessly operated a personal watercraft, from operating a personal watercraft on the State's waters for up to two years.
- Require the Secretary of State, by April 30, 2000, to track individual offenses of the bill.
- Repeal a section of the NREPA concerning personal watercraft.

Senate Bill 830 amended the NREPA to lower from 16 years to 14 years the age required of a person who wants to lease, hire, or rent a personal watercraft from a boat livery. The bill also prohibits a boat livery from leasing, hiring, or renting a personal watercraft to a person

who does not display a boating safety certificate issued by the DNR under the Personal Watercraft Safety Act unless he or she obtains training on the safe use of a personal watercraft from the boat livery; prohibits a person who leases, hires, or rents a personal watercraft from permitting another person to operate the craft if that person does not have boating safety certification; requires a boat livery to provide a copy of the written rental agreement to a person who leases, hires, or rents a personal watercraft; specifies that a person who rents, leases or hires a personal watercraft is liable for injury resulting from the negligent operation of the craft, if it is being used with his or her expressed or implied consent; and, establishes misdemeanor penalties for persons who violate the bill's safety training requirements for renting, leasing, or hiring a personal watercraft.

Senate Bill 897 amended the Code of Criminal Procedure to allow the issuance of an appearance ticket for a misdemeanor violation of the Personal Watercraft Safety Act for which the maximum permissible penalty does not exceed 92 days in jail and a fine.

Senate Bills 865 and 897 were tie-barred to each other. A more detailed description of the Senate Bills 865 and 830 follows.

Senate Bill 865

Application

The bill specifies that the Personal Watercraft Safety Act applies to personal watercraft and associated equipment used on the waters of the State. Except where expressly indicated otherwise, the Act does not apply to a personal watercraft that is all of the following: owned by a state or political subdivision of a state other than Michigan and its political subdivisions, used principally for governmental purposes, and clearly marked and identifiable as personal watercraft that is used principally for governmental purposes.

Reckless Operation

The bill specifies that the owner of a personal watercraft is liable for any injury occasioned by its negligent operation, whether the negligence consists of a violation of the State's statutes, or in the failure to observe the ordinary care in the operation that the rules of the common law require. The owner is not liable unless the personal

watercraft is being used with his or her expressed or implied consent. The bill also specifies that it is rebuttably presumed that the personal watercraft is being operated with the knowledge and consent of the owner if it is driven at the time of the injury by his or her son, daughter, spouse, father, mother, brother, sister, or other immediate member of the owner's family.

If a person carelessly and heedlessly operates a personal watercraft upon the waters of this State in disregard of the rights or safety of others, without due caution and circumspection, or at a rate of speed or in a manner that endangers or is likely to endanger a person or property, that person is guilty of reckless operation of a personal watercraft and is subject to the penalties specified in the bill.

Upon a person's conviction under these provisions, the court may issue an order prohibiting the person from operating a personal watercraft on the State's waters for up to two years and must order the person to participate in and complete a boating safety course. An order issued pursuant to this provision is in addition to any other penalty authorized under the bill for a misdemeanor.

A person who violates these provisions twice within a three-year period is guilty of a misdemeanor punishable by imprisonment for up to 90 days and/or a fine of up to \$1,000. A person who violates these provisions three or more times within a five-year period is guilty of a misdemeanor punishable by imprisonment for up to 90 days and/or a fine of up to \$2,000. Upon a person's second or subsequent conviction under these provisions, the court may issue an order impounding the personal watercraft that the person was operating at the time of the violation for up to one year, if either of the following conditions exists: the person owns the personal watercraft, or the person is the minor child of the personal watercraft's owner. The storage costs for impoundment must be paid by the owner of the personal watercraft.

Boating Safety Certificate

The Act provides that a person who was born after 1978 may not operate a personal watercraft unless he or she first obtains a boating safety certificate. A person who is 12 or more but under 14 before January 1, 1999, may use a personal watercraft if he or she obtains a boating safety certificate before that date.

Under the bill, an individual who is required to complete a boating safety course and who operates a personal watercraft on the waters of the State must display his or her boating certificate upon the demand of a peace officer who identifies himself or herself as a peace officer. A person must display only his or her own boating safety certificate upon the demand of peace officer, and must not display a fraudulent boating safety certificate. A peace officer may not stop a personal watercraft solely for the purpose of determining whether the operator possesses a boating safety certificate.

Dealer/DNR Requirements

The bill requires a dealer of a new or used personal watercraft to advise each person who buys a personal watercraft from the dealer of the sources of boating safety courses in the area. A dealer who violates this provision is responsible for a State civil infraction and must be ordered to pay a \$100 civil fine.

The bill requires the DNR to create and make available to personal watercraft dealers both of the following: a document that summarizes the laws that pertain exclusively to personal watercraft, and a document that summarizes the safety features of personal watercraft. This document may be a generic document and may not represent the safety features of a particular style or brand of personal watercraft. A dealer must provide a copy of each of these documents to each person who buys a personal watercraft from that dealer. A dealer who violates this provision is responsible for a State civil infraction and must be ordered to pay a \$100 civil fine.

Violations

The bill provides that, unless otherwise specified in the Act, a person who violates the Act is guilty of a misdemeanor, punishable by imprisonment for up to 90 days and/or a fine of not more than \$100. In addition, a violator may be required to participate in and complete a boating safety course.

By April 30, 2000, the Secretary of State must begin tracking individual offenses of the Act. In order to accomplish the tracking requirement, the Secretary of State must pursue and implement a comprehensive technology system, and work cooperatively with the appropriate departments of the State.

The bill requires peace officers to enforce the Act. If a person has received a citation for a violation of the Act's certification requirements, the court must waive any fine and costs upon receiving, within 10 days after the citation is issued, proof of certification by a law enforcement agency that the person, before the appearance date on the citation, produced a valid boating safety certificate or other certification, as applicable, that was valid on the date the violation occurred.

Repeal

The bill repealed a section of the NREPA (MCL 324.80143) that did the following:

- Required personal flotation devices for people riding on or being towed behind personal watercraft.
- Prohibited the operation of personal watercraft between sunset and sunrise.
- Required personal watercraft to be operated in a reasonable and prudent manner at all times.
- Prohibited the operation of a personal watercraft carrying more people than it was designed to carry.
- Specified a minimum distance from a dock, raft, or bathing area.
- Specified age restrictions for the operation of personal watercraft.

These provisions, with some modifications, are included in the Personal Watercraft Safety Act.

Senate Bill 830

The NREPA previously prohibited a boat livery from leasing, hiring, or renting a personal watercraft to a person who was under 16 years of age. The bill lowered the age to 14 years and adds that a livery may not lease, hire, or rent a personal watercraft to a person who does not display a boater safety certificate issued by the DNR, as required under the Personal Watercraft Safety Act. A livery also may not lease, hire, or rent a personal watercraft to a person who is not required to obtain a boater safety certificate issued by the DNR under that Act before operating a personal watercraft, unless the person obtains training in the safe use of a personal watercraft from the boat livery prior to the lease, hire, or rent of the personal watercraft. The Department is required to provide to boat liveries guidelines for the required training. A person who leases, hires, or rents a personal watercraft from a boat livery may not permit an individual to operate the watercraft if he or she has not obtained a

boater safety certificate or other certificate, as required under the Personal Watercraft Safety Act. A person who violates these provisions is guilty of a misdemeanor punishable by imprisonment for up to 90 days and/or a fine of at least \$100 but not more than \$500. A person who violates these provisions twice within a three-year period is guilty of a misdemeanor punishable by imprisonment for up to 90 days and/or a fine of up to \$1,000. A person who violates these provisions three or more times within a five-year period is guilty of a misdemeanor punishable by imprisonment for up to 90 days and/or a maximum fine of \$2,000.

The bill requires a boat livery to provide a copy of the written rental agreement to each individual who leases, hires, or rents a personal watercraft from the boat livery and who has obtained the required training. The rental agreement must include all of the following information: the name of the person who leases, hires, or rents a personal watercraft from the boat livery, and the date(s) of the lease, hire, or rental. The agreement is a valid boating safety certificate under the Personal Watercraft Safety Act only for the person named in the certificate on the date(s) of the lease, hire, or rental of the personal watercraft.

The bill provides that a person who leases, hires, or rents a personal watercraft from a boat livery is liable for any injury resulting from its negligent operation, whether the negligence consists of a violation of State statute, or the failure to observe ordinary care in the operation that the rules of the common law require. The person is not liable unless the personal watercraft is being used with his or her expressed or implied consent. The bill specifies that it is rebuttably presumed that the personal watercraft is being operated with the knowledge and consent of the person if it is driven at the time of the injury by his or her son, daughter, spouse, father, mother, brother, sister, or other immediate member of the person's family.

MCL 281.1405 et al. (S.B. 865)
324.44522 (S.B. 830)
764.9f (S.B. 897)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The increasing number of personal watercraft on the State's waters has been accompanied by a

growing dissatisfaction with the reckless operation of these craft. While personal watercraft make up 10% of the total number of registered boats and vessels in Michigan, they account for approximately 43% of the boating accidents in the State. Furthermore, local police agencies that enforce the State's marine laws report that many personal watercraft operators are not familiar with boating laws and do not understand their responsibilities as personal watercraft operators. The Personal Watercraft Safety Act was enacted to address this situation, and these bills complete the job of establishing new personal watercraft regulations. The bills specify penalties for reckless operation of personal watercraft, as well as prohibit a boat livery from leasing, hiring, or renting a personal watercraft to a person who does not display a boating safety certificate, unless he or she has been trained on the safe use of the craft by the boat livery. Also, the owner of a personal watercraft is liable for any injury resulting from its negligent operation by an operator who received the owner's expressed or implied consent to use the craft. Thus, owners will be discouraged from allowing persons who are not knowledgeable or experienced in using a personal watercraft to operate the vessel in a manner that will result in an injury to another person or property.

Opposing Argument

Many people perceive the reckless operation of personal watercraft on the State's lakes and rivers to be greater than the actual situation. For example, there was only one fatality involving a personal watercraft in 1997 compared with 20 fatalities resulting from boating accidents the same year, according to the DNR. Regardless of this record, many shoreline property owners and other water enthusiasts contended that stricter regulations were needed to address concerns about reckless operation of personal watercraft.

Legislative Analyst: L. Arasim

FISCAL IMPACT

Senate Bill 865

The bill will have a minimal fiscal impact on State and local government, dependent upon the amount of fines imposed. The bill requires completion of a boating safety course prior to operating a personal watercraft, which will rely on current Marine Safety Fund appropriations for boating safety education grants. At present, these funds are allocated to local county sheriffs departments.

Senate Bill 830

The bill will have an indeterminate fiscal impact on State government, depending on the number of violations and amount of fine revenue obtained.

Senate Bill 897

The bill will have no fiscal impact on State or local government.

Fiscal Analyst: G. Cutler

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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.