

# Legislative Analysis

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## OPERATION OF SPORTSCRAFT WITH BAC OF 0.08 GRAMS OR HIGHER

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**House Bill 4614 as introduced**  
**Sponsor: Rep. Gary A. Newell**

**House Bill 4615 as introduced**  
**Sponsor: Rep. Tonya Schuitmaker**

**House Bill 4616 (Substitute H-1)**  
**Sponsor: Rep. Paul Condino**

**Committee: Judiciary**  
**First Analysis (4-28-05)**

**BRIEF SUMMARY:** The bills would prohibit a person from operating an ORV, watercraft, or snowmobile with a bodily alcohol level of 0.08 grams or any bodily amount of a Schedule 1 controlled substance or cocaine and would increase the length of a license suspension for refusing to submit to a chemical test.

**FISCAL IMPACT:** These bills would not have a fiscal impact on the State of Michigan. There may be an indeterminate fiscal impact if the change in the blood alcohol threshold leads to an increase in the number of arrests and thereby an increase in fine revenue to local libraries.

### **THE APPARENT PROBLEM:**

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. Public Act 61 of 2003 amended the Michigan Vehicle Code to establish a bodily alcohol content (BAC) of 0.08 grams, instead of 0.10 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. Legislation is being offered to make the statutes regarding the operation of recreational vehicles and vessels conform with the recent changes in the vehicle code.

### **THE CONTENT OF THE BILLS:**

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 intoxicating liquor or a controlled substance, or both. The bills 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, watercraft, 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 or vessel while visibly impaired from the consumption of alcohol 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 BAC 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 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 contained in the Michigan Vehicle Code were eliminated 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.
- Increase the suspension of a person’s right to operate an ORV, watercraft, 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.
- 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 4614 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 also is identical to provisions pertaining to snowmobiles and watercraft.

House Bill 4614 would amend provisions pertaining to ORVs (MCL 324.81101 et al.).  
House Bill 4615 would amend provisions pertaining to watercraft (MCL 324.80101 et

al.). House Bill 4616 would amend provisions pertaining to snowmobiles (MCL 324.82101 et al.).

**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 of 2003, which lowered the *per se* bodily alcohol content (BAC) for driving while intoxicated from 0.10 to 0.08 grams, it is now necessary to make changes to the statutes regulating these recreational vehicles and vessels. The bills would adopt the same *per se* level of a 0.08 BAC as does the vehicle code, thus bringing consistency and uniformity between the acts. House Bill 4614 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.

***Against:***

Some feel that the only reason the BAC level for drunk driving was lowered to 0.08 grams was because of strong-arm tactics by the federal government – either the state adopted a BAC of 0.08 or it faced a loss of federal transportation dollars for road repairs. Many believed at the time that each state should have been allowed to craft drunk driving laws that fit its own unique needs. For instance, some felt that changes to the repeat offenders law significantly reduced the incidents of drunk driving in the state and therefore the 0.10 BAC should have been allowed to remain in place. And now, the BAC levels for recreational vehicles will be lowered just to be consistent with motor vehicles, a move which appears to some to punish responsible social drinkers. Unless a risk to the public safety is documented, the levels should be left the same.

***Response:***

Proponents of the bills say that safety requires 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. There shouldn't be two levels of intoxication – one level for driving a car and another for recreational vehicles such as boats, ORVs, and snowmobiles. An impaired operator is dangerous whether driving a snowmobile or a car. It is well documented that a BAC of 0.08 grams and over results in significant impairment of judgment and motor skills. And many accidents involving boats and personal water craft are caused by operators who have been drinking. 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 a BAC of 0.08 grams the *per se* level for drunk driving, in any vehicle, is still good public policy.

***POSITIONS:***

A representative of the Michigan State Police indicated support for the bills. (4-27-05)

A representative of the Michigan Sheriff's Association indicated support for the bills. (4-27-05)

A representative of the Michigan Licensed Beverage Association testified in opposition to the bills. (4-27-05)

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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.