



Senate Fiscal Agency
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BILL ANALYSIS



Telephone: (517) 373-5383
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House Bill 5541 (as reported without amendment)
 House Bill 5542 (as reported by the Committee of the Whole)
 House Bills 5543 through 5546 (as reported without amendment)
 House Bill 5547 (Substitute H-1 as reported without amendment)
 House Bill 5548 (Substitute H-1 as reported without amendment)
 House Bill 5549 (Substitute S-1 as reported)
 House Bills 5550 through 5552 (as reported without amendment)
 Sponsor: Representative Alan Cropsey (H.B. 5541 & 5552)
 Representative Eric Bush (H.B. 5542)
 Representative Jessie Dalman (H.B. 5543)
 Representative Michael Nye (H.B. 5544 & 5546)
 Representative Candace Curtis (H.B. 5545)
 Representative Roland Jersevic (H.B. 5547)
 Representative Allen Lowe (H.B. 5548)
 Representative Frank M. Fitzgerald (H.B. 5549)
 Representative James Ryan (H.B. 5550)
 Representative David Galloway (H.B. 5551)

House Committee: Judiciary and Civil Rights
 Senate Committee: Judiciary

Date Completed: 3-25-96

RATIONALE

Civil infractions, a noncriminal designation for relatively minor offenses, first were established in Michigan law by a package of legislation (Public Acts 510 through 517 of 1978) that decriminalized various minor traffic and parking offenses, which previously had been classified as misdemeanors. Decriminalization of relatively minor offenses then was applied to various other areas of law, and, over the years, civil infractions usually came to be referred to as either "motor" (or "traffic") or "nonmotor" civil infractions, depending on whether they dealt with traffic violations. A third major category of civil infractions was created by Public Acts 12 through 26 of 1994, which allow local units of government to designate certain ordinance violations as "municipal civil infractions", and to bring civil, rather than criminal, actions against people who are responsible for those violations. Although there are statutory procedures in place for processing motor and municipal civil infractions, no such procedures existed for the other miscellaneous civil infractions in various laws until Public Act 54 of 1995 (House Bill 4426) was enacted. Public Act 54 amended the Revised Judicature Act to define a new class of civil infractions, "state civil infractions", and to specify

procedures for processing them. A number of Michigan laws, however, refer to "civil infractions" (or "civil violations") that are neither traffic civil infractions nor municipal civil infractions. Also, some laws refer to fines or civil fines without mentioning civil infractions, and some were amended in anticipation of the enactment of a "civil procedures act". In order to provide for clarity and consistency, some people believe that these acts should be amended to specify the type of civil infractions and that certain fines are civil fines for the various types of civil infractions.

CONTENT

House Bills 5541 through 5546, 5547 (H-1), 5548 (H-1), 5549 (S-1), and 5550 through 5552 would amend various acts to designate specific civil infractions or civil violations as *State* civil infractions or *municipal* civil infractions or require them to be processed in the same manner as civil infractions under the Michigan Vehicle Code. Some of the bills also would specifically designate as *civil* fines the fines assessed for civil infractions.

Several of the bills also would make other changes to the acts.

House Bill 5541

The bill would amend the handgun licensure Act to designate as a State civil infraction failure to ensure that a pistol presented for a safety inspection is unloaded and equipped with a trigger lock or other disabling mechanism or encased, which currently is a civil violation. The Act specifies that a person who commits the civil violation may be fined not more than \$50. The bill, instead, provides that a person who committed the State civil infraction could be ordered to pay a civil fine of up to \$50.

House Bill 5542

The bill would amend Public Act 359 of 1921, which provides for the issuance of veterans' licenses without cost to former members of the U.S. armed forces to sell their own goods within Michigan, to designate as a State civil infraction certain civil infractions under the Act. The Act requires a licensee under the Act to display signs stating that the sale of the products is for his or her own personal benefit, and prohibits a person from knowingly making a false representation that the proceeds from goods sold would benefit a veterans' organization. Violation of these provisions is a civil infraction and the Act specifies that a violator may be "liable for" a civil fine of not more than \$1,000. The bill would designate those violations as State civil infractions and provides that a violator could be "ordered to pay" a civil fine of up to \$1,000.

The bill also would delete a provision requiring that the prosecutor for the county in which a person violated the Act bring a civil action to enforce the Act.

In addition, the bill would amend the Act's definition of "veterans' organization" to refer to an entity organized for a "charitable", rather than an "eleemosynary", purpose.

House Bill 5543

The bill would amend the Pupil Transportation Act to specify that civil infractions for a school bus driver's violation of the Act's guidelines either for railroad crossings or improper transportation of people other than pupils would have to be processed in the same manner as a civil infraction under the Michigan Vehicle Code. The bill also

specifies that a violator could be ordered to pay a civil fine of not more than \$100. Currently, the violations are designated as civil infractions, but the Act is silent on the question of fines.

House Bill 5544

The bill would amend the Natural Resources and Environmental Protection Act (NREPA) to provide that a person who violated a rule promulgated or order issued under a section dealing with the protection of the lands and property under the control of the Department of Natural Resources against wrongful use or occupancy would be responsible for a State civil infraction and could be ordered to pay a civil fine of up to \$500. Currently, the Act provides that the violation is a misdemeanor, punishable by up to 90 days' imprisonment and/or a maximum fine of \$500, and that on and after the date the "civil procedures act" is enacted into law, the violation is a civil infraction subject to a civil fine of not more than \$500.

The bill also would delete a park and recreation enforcement officer's authority to arrest a person without a warrant if the person commits a civil infraction in violation of any of a number of provisions of the Michigan Vehicle Code. Instead, the bill would allow a park and recreation officer to issue a citation for those civil infractions. (An officer could still make an arrest without a warrant for certain misdemeanor violations of the Vehicle Code.)

House Bill 5545

The bill would amend the NREPA to designate as a municipal civil infraction the violation of a local ordinance enacted under authority granted by the NREPA regarding the posting and notification of the application of a pesticide. The Act provides that violations of an ordinance "are limited to a civil infraction of not more than \$500". The bill specifies, instead, that a violator would be "responsible for a municipal civil infraction" and could "be ordered to pay a civil fine" of not more than \$500.

House Bill 5546

The bill would amend the NREPA to specify that a person who owned land that was not in compliance with a part of the Act dealing with soil erosion and sedimentation control or who, after notice, refused to implement and maintain soil erosion and sedimentation control measures, would be responsible for a State civil infraction and

could be ordered to pay a civil fine of not more than \$500. The Act currently provides that a violator is subject to a civil fine of up to \$500.

In addition, the bill would delete a provision requiring that the fines be paid to the responsible enforcing agency in the local unit in which the land is located, and allowing a default in payment to be remedied by any means authorized under the Revised Judicature Act.

House Bill 5547 (H-1)

The bill would amend the NREPA to specify that a person who violated the Act's requirement regarding providing a personal flotation device for each child under six years old on a vessel would be responsible for a State civil infraction and could be ordered to pay a civil fine of up to \$100. Currently, the Act provides that a violator is subject to a civil fine of up to \$100. In addition, the bill would designate as a State civil infraction a boat operator's refusal to submit to a preliminary chemical breath analysis upon a lawful request by a peace officer, which currently is a civil infraction. A person responsible for the current civil infraction is "subject to a civil fine" of up to \$100; under the bill, a violator could "be ordered to pay a civil fine" of up to \$100.

The bill also would change references to a boat operator's measure of bodily alcohol content from a percentage of alcohol by weight in the blood to specific measures of alcohol in the blood, breath, or urine. (This would be consistent with recent revisions in the Michigan Vehicle Code's drunk driving provisions.)

House Bill 5548 (H-1)

The bill would amend the NREPA to designate as a State civil infraction violation of the Act's requirements regarding a certificate of title for an off-road recreational vehicle (ORV). A violator currently is responsible for a civil violation and is "subject to a civil fine" of up to \$100; under the bill a violator could "be ordered to pay a civil fine" of up to \$100. In addition, the bill would designate as a State civil infraction an ORV operator's refusal to submit to a preliminary chemical breath analysis upon a lawful request by a peace officer, which currently is a civil infraction, and specifies that a violator could be ordered to pay a civil fine of up to \$100. The bill would delete a requirement that the violation be processed in the same manner as a civil infraction under the Michigan Vehicle Code.

The bill also would designate as State civil infractions violation of several sections that the Act specifies are civil violations on and after the date the "civil procedures act" is enacted into law. Under the Act, violators are "subject to a civil penalty" of up to \$500; under the bill, violators could "be ordered to pay a civil fine" of up to \$500.

The bill also would change references to an ORV operator's measure of bodily alcohol content from a percentage of alcohol by weight in the blood to specific measures of alcohol in the blood, breath, or urine. (This would be consistent with recent revisions in the Michigan Vehicle Code's drunk driving provisions.)

House Bill 5549 (S-1)

The bill would amend the NREPA to change references to a snowmobile operator's measure of bodily alcohol content from a percentage of alcohol by weight in the blood to specific measures of alcohol in the blood, breath, or urine. (This would be consistent with recent revisions in the Michigan Vehicle Code's drunk driving provisions.)

The bill incorporates civil infraction and snowmobile permit amendments made by House Bill 5149 (Public Act 139 of 1996).

House Bill 5550

The bill would amend the Michigan Liquor Control Act to establish a maximum civil fine of \$100 for the State civil infraction of refusal by a person less than 21 years of age to submit to a preliminary chemical breath test analysis. The violation currently is designated as a State civil infraction, but the Act is silent on the question of a fine.

In addition, the bill would delete a requirement, rendered unenforceable by Public Act 122 of 1995, that 50% of fines collected for a minor's illegal purchase, consumption, or possession of alcohol be deposited with the State Treasurer for deposit in the General Fund to the credit of the Department of Public Health for substance abuse prevention, treatment, and rehabilitation. (Public Act 122 changed those sanctions from civil fines to criminal fines. Since Article VIII, Section 9 of the State Constitution requires penal fines to be used exclusively for the support of public libraries, the Liquor Control Act's requirement that the fines be used for substance abuse prevention, treatment, and rehabilitation is in conflict with the Constitutional requirement.)

House Bill 5551

The bill would amend the Revised Judicature Act to designate as a State civil infraction the Act's civil infraction for violating prohibited actions of a sheriff, deputy sheriff, or county medical examiner licensed to practice law. The current civil infraction is "punishable by a fine" of up to \$500; under the bill, a violator could "be ordered to pay a civil fine" of up to \$500.

House Bill 5552

The bill would amend Chapter 171 of the Revised Statutes of 1846, which provides for the regulation of county jails, to designate as State civil infractions both of the following, which currently are civil infractions:

- Selling, hiring, leasing, loaning, contracting for, or otherwise using the labor of prisoners for a person's own private benefit or financial gain.
- A sheriff's deriving any private benefit or financial gain from the provision of food to prisoners, whether by retaining the difference between money budgeted for food and money spent for food, or by any other method.

Violators currently are "subject to a fine of not more than \$500 plus the value of the private benefit or financial gain". Under the bill, violators could "be ordered to pay a civil fine" of up to \$500.

MCL 28.429 (H.B. 5541)
35.442 (H.B. 5542)
257.1857 & 257.1859 (H.B. 5543)
324.504 & 324.74124 (H.B. 5544)
324.8328 (H.B. 5545)
324.9121 (H.B. 5546)
324.80142 et al. (H.B. 5547)
324.81109 et al. (H.B. 5548)
324.82118 et al. (H.B. 5549)
436.33b (H.B. 5550)
600.586 (H.B. 5551)
801.10 (H.B. 5552)

SENATE COMMITTEE ACTION

The Senate Judiciary Committee adopted a substitute (S-1) to House Bill 5549 that incorporates amendments to the NREPA regarding snowmobile trail permits and civil infractions that were made by House Bill 5149.

The Senate Committee of the Whole adopted an amendment to House Bill 5542 to replace a word in the definition of "veterans' organization".

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 bills are mainly technical in nature, specifying new language or amending provisions in various acts that, in light of the passage of the State civil infraction legislation (Public Act 54 of 1995), need changes to conform with current laws. In the case of House Bill 5550, the bill would bring an act into conformity with the State Constitution. When Public Act 122 of 1995 changed the civil fines for minors' alcohol violations, under the Liquor Control Act, to criminal fines, fine revenue could no longer be dedicated to the Department of Public Health for substance abuse services. Under Article VIII, Section 9 of the State Constitution, all fines assessed and collected for a breach of the penal laws are required to be used to fund public libraries. Since a misdemeanor offense is a criminal offense, the fines that were increased under Public Act 122 no longer can be used to fund health department substance abuse programs. House Bill 5550 would delete the provision requiring distribution of 50% of the revenue from those fines for that purpose.

Although most of the bills would designate existing "civil infractions" or "civil violations" as "state civil infractions", House Bill 5543 would treat school bus driver "civil infractions" under the Pupil Transportation Act the same as traffic civil infractions under the Michigan Vehicle Code, and House Bill 5545 would designate violations of local pesticide ordinances that conform with the NREPA as "municipal civil infractions", rather than "state civil infractions", since these violations are enforced locally.

House Bill 5544 would change language in the NREPA that treats civil infractions similarly to criminal violations. Currently, the Act provides for park and recreation enforcement officers to "arrest" someone without a warrant under circumstances that include committing "a civil infraction or misdemeanor". Since someone responsible for a civil infraction is issued a citation and is not arrested, the bill would correct this procedural provision.

House Bills 5543 and 5550 also would add prescribed maximum civil fines (in the former case, for a “civil infraction” and, in the latter, for an existing “state civil infraction”), while House Bill 5549 (S-1) would change a flat \$50 fine to a maximum \$50 “civil fine”, bringing the amended statutes into conformity with the way other acts assess fines for State civil infractions. House Bill 5546 would help maintain a consistent pattern for the distribution of civil fines and costs by removing language requiring that fines collected for soil erosion violations be paid to the local enforcing agency.

Response: While the bills would standardize language pertaining to civil infractions and civil violations in a number of acts, several other laws also refer to a “civil violation” and, perhaps, should be included in the legislation. These include a section in the handgun licensure Act (MCL 28.430), other than that which House Bill 5541 would amend, and sections in the State Construction Code Act (MCL 125.1523a); the Michigan Campaign Finance Act (MCL 169.215); Public Act 31 of 1990, which regulates athletic services providers (MCL 333.26303); and the Electrical Administrative Act (338.890).

In addition, two sections of the NREPA impose civil fines for a first offense of damage to property amounting to \$100 or less, without calling the offense a “civil infraction”, and make a subsequent violation (or a first-time offense for a greater amount of damage) a criminal misdemeanor offense (MCL 324.2157 and 324.52908). Since legislative efforts have been made to separate civil infractions from crimes, and because civil infractions are not lesser included offenses in crimes, categorizing these offenses might require a different approach than simply designating them as civil infractions.

Legislative Analyst: P. Affholter

FISCAL IMPACT

House Bills 5541, 5542, 5544 to 5549 (H-1), 5551, and 5552

The bills would have no fiscal impact on State or local government. Under House Bill 5546, fine revenue would be payable to public libraries, instead of local enforcing agencies.

House Bill 5543

The State Court Administrative Office guide for fines and costs listed \$31 as the recommended

fine for this infraction under the Pupil Transportation Act.

House Bill 5550

The provisions of the bill that would strike the requirement that 50% of the revenue collected from fines imposed on underage drinkers be credited to the Department of Public Health (DPH) would have no fiscal impact. A previously enacted amendment to this Act (Public Act 122 of 1995) converted these fines from civil to penal fines; thus, pursuant to Article VIII, Section 9 of the State Constitution, the \$80,000 previously allocated annually to the DPH, will be dedicated to libraries.

The provisions of the bill that would impose a fine of up to \$100 on persons under 21, who do not consent to a breathalyzer, would result in an indeterminate increase in revenue that would be dedicated to libraries. The amount of revenue would depend on the number of violations and the level of the fine imposed. Guidelines issued by the State Court Administrator’s Office for a similar violation by adults recommend a \$54 fine.

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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.