



Olds Plaza Building, 10th Floor
Lansing, Michigan 48909
Phone: 517/373-6466

NONMOTOR CIVIL INFRACTIONS

House Bill 4426 with committee
amendments

House Bill 4427 as introduced
First Analysis (3-2-95)

Sponsor: Rep. Michael E. Nye
Committee: Judiciary and Civil Rights

THE APPARENT PROBLEM:

Noncriminal violations of the Michigan Vehicle Code are "civil infractions," for which the vehicle code provides detailed procedures for issuance of citations, challenges in court, appeals, and payment and distribution of fines. Michigan also has in place over a dozen other statutes that specify various offenses to be "civil infractions" or "civil violations" subject to civil fines. However, these other statutes typically specify no procedures on how nonmotor civil infractions are to be processed, how fines are to be levied and distributed, and how nonmotor civil infraction citations are to be enforced.

The use of noncriminal sanctions for relatively minor offenses continues to be of interest for a wide range of situations, as recent public acts testify. Recent acts establishing various nonmotor civil violations include Public Acts 187 of 1990 (for certain violations of the pupil transportation safety act), 320 of 1990 (for certain handgun safety violations), and 99 of 1994 (for failure to secure a snowmobile trail permit sticker).

Legislation has been proposed to specify procedures for nonmotor civil infractions.

THE CONTENT OF THE BILLS:

The bills would specify procedures for issuing and processing "state civil infractions" (that is, noncriminal violations of state law that are not traffic or parking violations or violations of the Marine Safety Act). House Bill 4426 would amend the Revised Judicature Act (MCL 600.8313 et al.) to establish procedures paralleling those for vehicular civil infractions. The bill would in addition amend provisions on municipal civil infractions to allow the court, under certain circumstances, to require a defendant to pay the costs associated with compelling his or her appearance (similar authority exists with regard to vehicular civil infractions, and

would be provided for state civil infractions). House Bill 4427 would amend the Michigan Vehicle Code (MCL 257.321a) to bar issuance or renewal of a driver's license if the person had an outstanding judgment for a state civil infraction. Both bills would take effect January 1, 1996, providing both were enacted. A more detailed explanation of the bills follows.

State civil infraction bureau. With the approval of the local funding unit, the district court could establish a state civil infraction bureau using court personnel to accept admissions of state civil infractions and to collect civil fines and costs. A state civil infraction bureau could be combined with a traffic bureau. A person would have the right to appeal from the state civil infraction bureau to the district court.

State civil infraction actions. A state civil infraction action would be commenced upon issuance of a citation. The plaintiff in a state civil infraction action would be the state. The district court and any municipal court would have jurisdiction over state civil infraction actions. A state civil infraction could not be a lesser included offense of a criminal offense.

Minors. A minor would be permitted to appear in court or to admit responsibility for a state civil infraction without the necessity for appointment of a guardian or next friend. The court could proceed in all respects as if the minor were an adult.

Citations--issuance. A law enforcement officer who witnessed a person committing a state civil infraction could stop the person, detain the person temporarily for the purpose of issuing a citation, and complete an original and three copies of a citation. The bill states that an officer could issue a citation if personal investigation gave the officer

House Bills 4426 and 4427 (3-2-95)

reasonable cause to believe that the person was responsible for a state civil infraction in connection with an accident. If the prosecuting attorney gave written approval, an officer could issue a citation to a person for reasonable cause based on personal investigation by the officer of a complaint by someone who witnessed the person committing a state civil infraction. A complaint for a state civil infraction signed by a law enforcement officer would be treated as made under oath if the violation occurred in the signing officer's presence, and the officer signed an affirmation in the complaint.

A law enforcement officer who accepted a fee for issuing a citation would be guilty of misconduct in office and would be subject to removal from office.

Citations--form. Each citation would be in a form approved by the state court administrator, numbered consecutively, and generally consist of an original and three copies. The original would be filed with the court, the first copy would be retained by the law enforcement agency, the second copy would be issued to the alleged violator if the violation was a misdemeanor, and the third copy would be issued to the alleged violator if the violation was a state civil infraction.

The citation would contain, among other things, the telephone number of the court, the time at or by which the person would have to appear, and an explanation that the defendant could do one of the following at or by the time specified for appearance: admit responsibility for the state civil infraction in person, by representation, or by mail; admit responsibility "with explanation" in person, by representation, or by mail; or, deny responsibility by appearing in court for an informal or formal hearing. The citation would note that to admit responsibility "with explanation" in person or to have an informal or formal hearing, the defendant would have to apply to the court for a hearing date; a hearing date could be specified on the citation.

The citation would contain a notice in boldfaced type that failure to appear as required would lead to a default judgment against the defendant and the refusal by the secretary of state to issue or renew a driver's license. The requirement for timely appearance would be met by timely application for a hearing, return of the citation with an admission of responsibility with explanation, or return with an admission of responsibility and full payment of applicable fines and costs.

Uncontested citations. A defendant could admit responsibility in person, by representation, or by mail, and the court could order the defendant to pay applicable fines and costs. If a defendant admitted responsibility "with explanation", whether by mail or in person, the court would accept the admission and could impose lower fines and costs in consideration of the defendant's explanation. If an explanation was offered by representation or by mail, the court could require the defendant to provide further explanation or appear in court.

Contested citations. If a defendant wished to deny responsibility for a state civil infraction, he or she could do so by appearing for a formal or informal hearing. If the hearing date was not specified on the citation, the defendant would have to contact the court to obtain a hearing date. Unless the defendant expressly requested a formal hearing, the hearing would be informal.

Informal hearings. An informal hearing could be conducted by a municipal court or district court judge or by a magistrate authorized by the judge or judges of the district; a magistrate could administer oaths, examine witnesses, and make findings of fact and conclusions of law at an informal hearing. An informal hearing would be conducted so as to do substantial justice according to the rules of substantive law, but would not necessarily be conducted according to statutory provisions or rules of practice, procedure, pleading, or evidence, except provisions relating to privileged communications. There would be no jury, and no verbatim record would be required. The defendant could not be represented by an attorney, and the plaintiff could not be represented by the prosecuting attorney. The defendant and plaintiff could subpoena witnesses. If the judge or magistrate determined by a preponderance of the evidence that the defendant was responsible for a state civil infraction, he or she would order the defendant to pay a fine and costs. Otherwise, a judgment would be entered for the defendant, but the defendant would not be entitled to costs of the action.

The plaintiff or defendant could appeal an adverse judgment. An appeal from a municipal judge would be a trial in the circuit court. An appeal from a decision of a district judge would be a formal hearing by a different judge of the district. An appeal from a district court magistrate would be a formal hearing by a judge of the district.

Formal hearings. A formal hearing would be conducted only by a municipal court or district court judge. The defendant could be represented by an attorney, but would not be entitled to counsel appointed at public expense. The prosecutor would appear in court, and would be responsible for subpoenaing each witness for the plaintiff. The defendant also could subpoena witnesses. As with informal hearings, there would be no jury trial. If the judge determined by a preponderance of the evidence that the defendant was responsible for a state civil infraction, he or she could order the defendant to pay a fine and costs. Otherwise, a judgment would be entered for the defendant, but the defendant would not be entitled to costs of the action.

Failure to appear. If the defendant failed to appear as directed by the citation or at a scheduled appearance or hearing, the court would enter a default judgment against the defendant. If the citing officer failed to appear at a scheduled informal hearing, or if the prosecutor failed to appear at a scheduled formal hearing, the court would enter a judgment for the defendant, but the defendant would not be entitled to costs.

Fines and costs. Each district of the district court and each municipal court could establish a schedule of fines and costs to be imposed for state civil infractions that occur within the district or city. Any such schedule would be prominently posted and readily available for public inspection. A schedule would not have to include all violations that are designated by law as state civil infractions. Costs ordered by a court could include all expenses, direct and indirect, to which the defendant had been put in connection with the state civil infraction; however, any costs ordered would have to be between \$9 and \$500. Generally, any fine or costs would be payable immediately upon entry of a judgment; however, a judge or magistrate could extend the payment period or authorize installment payments. A magistrate could order fines and costs only to the extent expressly authorized by the chief or only judge of the district. Costs in an action in district court would be distributed as otherwise provided by the Revised Judicature Act. Costs in an action in a municipal court would be paid to the county.

In addition, the judge or district court magistrate could assess additional costs incurred in compelling the appearance of a defendant who was found

responsible for a civil infraction. These costs would go into the general fund of the unit of government assessing the costs.

Civil contempt. If a defendant defaulted on payment, the court could require the defendant to show cause why the default should not be treated as civil contempt; the court could issue a summons, an order to show cause, or a bench warrant of arrest for the defendant's appearance. In the case of a corporation or association, individuals authorized to make the disbursement would be subject to civil contempt for failure to pay the fine or costs. Unless the defendant was able to show that the default was not attributable to an intentional refusal to obey the court or to a failure to make a good faith effort to obtain the funds required for payment, the court would find that the default constituted civil contempt. Upon finding civil contempt, the court could order the defendant committed until all or a specified part of the civil fine, costs, or both was paid; however, the period of incarceration could not exceed one day for each \$30 of fine and costs.

Nonrenewal of license. If a defendant failed to answer a citation or notice to appear in court, or failed to comply with a court order or judgment issued under the bill, the court would notify the secretary of state of that failure. Thereafter, the secretary of state would not renew or issue an operator's or chauffeur's license for that person until informed by the court that the person has resolved all matters relating to the violation or noncompliance, and that the person had paid to the court a \$25 license reinstatement fee.

Libraries. Civil fines would be exclusively applied to the support of public libraries and county law libraries in the same manner as is provided by law for criminal fines imposed for violation of a penal law. This provision would be expressly intended to maintain a source of revenue for public libraries that previously received fines for misdemeanors that are now designated as civil infractions.

Criminal penalties. A law enforcement officer who knowingly made a materially false statement in a citation would be guilty of perjury, punishable by imprisonment for up to 15 years; he or she would in addition be in contempt of court. A defendant who failed to comply with an order or judgment issued under the bill would be guilty of a misdemeanor.

FISCAL IMPLICATIONS:

The House Fiscal Agency (HFA) reports that although House Bill 4426 would create new revenue sources, it also would generate accompanying expenses. Components that cannot be quantified at this time include: the number of violations and resulting workload; costs associated with forms, administration, and the appeal process; whether certain administrative costs would be covered by new revenues; and, whether fines collected would cover court costs. House Bill 4426 is expected to increase state and local revenues and costs by indeterminate amounts. (2-28-95)

With regard to House Bill 4427, the HFA noted that the bill would increase state costs in an amount dependant on any ensuing workload increases, and that it would have no local fiscal impact. (2-23-95)

ARGUMENTS:**For:**

The bills would fill a gap in Michigan statute: the failure to explicitly provide details on how nonmotor civil infractions are to be processed. The need to fill this gap is growing with the number of public acts, bills, and amendments that propose to make various minor offenses "civil infractions" or "civil violations." The bills sensibly would employ the basic procedures set forth in the vehicle code, essentially adopting vehicle code procedures, with minor modifications. The bills would explain how citations are to be issued, allow for defendant response to and appeals regarding citations, provide enforcement mechanisms, and specify distribution of fine revenue. The bills not only would ensure that appropriate procedures were followed: they also would promote consistency across the state and thus improve the administration of justice.

Against:

The bills propose to use driver's license sanctions as an enforcement mechanism for non-driving offenses, which would be problematic in several respects. For one thing, many believe that driver's license sanctions properly should be reserved for driving violations; to do otherwise would be illogical, and could dilute what force license sanctions hold for encouraging compliance with traffic laws. In addition, to use driver's license sanctions as an enforcement mechanism would be to create a system of unequal punishment; people with driver's licenses would be subject to sanctions to which

nondrivers would be immune. Finally, driver's license sanctions appear to be fairly ineffective at getting people to pay their traffic tickets or obey drunk driving laws. The numbers of people who drive without valid licenses can only be guessed at, but the secretary of state has reported that about one-third of drivers facing suspensions due to moving violations simply opt to allow their licenses to be suspended rather than go to court.

Response:

The proposal to bar driver's license renewal for someone with outstanding fines for nonmotor civil infractions may not be without flaws, but it at least offers an alternative to imposing contempt penalties, which means bench warrants and jail time, for nonpayment of fines.

Against:

There may be a need for additional legislation to amend the various statutes now providing for nonmotor civil infractions or civil violations to standardize usage and refer to "state civil infractions." In addition, there may be a need to amend the minor in possession provisions of the liquor control act to clarify whether the bill's procedures are to prevail in those situations.

POSITIONS:

The Michigan Court Administrators Association supports House Bill 4426, and is neutral on House Bill 4427. (3-1-95)

The Department of State does not have a position on the legislation at this time. (3-1-95)

AAA Michigan does not have a position on House Bill 4426 and opposes House Bill 4427. (3-1-95)