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MARINE LAW VIOLATIONS: STATE CIVIL INFRACTIONS

House Bills 4505-4507 (Substitutes H-1)
Sponsor: Rep. David M. Gubow
Committee: Judiciary and Civil Rights

Complete to 7-11-95

A SUMMARY OF HOUSE BILLS 4505-4507 (SUBSTITUTES H-1)

The bills would amend three acts -- the Natural Resources and Environmental Protection Act (House Bill 4507), the Code of Criminal Procedure (House Bill 4506), and the Revised Judicature Act (House Bill 4505) -- to define certain boating offenses as state civil infractions and to specify procedures for issuing and processing these infractions.

House Bill 4507 (H-1)

Marine law violations: state civil infractions. Currently, all violations of the marine safety part (part 801 of subchapter 5) of the Natural Resources and Environmental Protection Act (Public Act 58 of 1995, enrolled House Bill 4349) are misdemeanors, unless otherwise specified in the act [section 80171]. (This part of NREPA formerly was the Marine Safety Act, Public Act 303 of 1967.) The act does list several felonies and one civil infraction. The only civil infraction currently specified in the act is the refusal to submit to a preliminary chemical breath analysis upon the lawful request of a peace officer [section 80180], and is punishable by a civil fine of not more than \$100. The act also specifies several felony violations: drunk boating that results in death or serious ("long-term incapacitating") injury [section 80176]; third (and subsequent) convictions within a ten year period for drunk boating [section 80177]; and an offense called "felonious boating" (which involves operating a vessel "carelessly and heedlessly in wilful and wanton disregard of the rights or safety of others, or without due caution and circumspection and at a speed or in a manner so as to endanger or be likely to endanger any person or property and thereby injures so as to cripple any person, but not causing death" [section 80173]). The act also defines [section 80131] a "felony in which a vessel was used," to mean a felony, during the commission of which, the person committing the felony operated a vessel, and, while operating it, "presented real or potential harm to persons or property" under one of four circumstances: the vessel either was necessary for committing the felony or was used as an instrument of the felony, to transport a victim of the felony, or to flee the scene of the felony.

Currently, also, "civil infraction" is defined both in the Michigan Vehicle Code and in the Revised Judicature Act. The Michigan Vehicle Code (MCL 257.6a) defines "civil infraction" to mean "an act or omission prohibited by law which is not a crime as defined in [the penal code], and for which civil sanctions may be ordered." (The Michigan Penal Code defines "crime" to mean "an act or omission forbidden by law which is not designated as a civil infraction, and which is punishable upon conviction by any [one] of the following:

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(a) imprisonment, (b) fine not designated a civil fine, (c) removal from office, (d) disqualification to hold an office of trust, honor, or profit under the state, (e) other penal discipline.") The recently amended (by Public Act 54, enrolled House Bill 4426, of 1995) Revised Judicature Act (MCL 60.8313 et al.) defines "civil infraction" and establishes procedures for issuing citations for, and processing, state civil infractions. A "civil infraction" means "an act or omission that is prohibited by a law and is not a crime under that law or that is prohibited by an ordinance and is not a crime under that ordinance, and for which civil sanctions may be ordered." The definition of "civil infraction" specifically includes, but is not limited to, traffic or parking violations (under various state laws, including the Michigan Vehicle Code), municipal civil infractions, and state civil infractions.

The bill would amend the Natural Resources and Environmental Protection Act (MCL 324.80101 et al.) to define "state civil infraction" to mean "an act or omission prohibited by marine law that [was] subject to a civil sanction, but that [was] not a crime as defined in [the penal code]," to make certain violations that currently are misdemeanors state civil infractions, and to establish procedures for issuing citations for, and processing, marine law infractions that were state civil infractions.

The bill would make the following violations of the act "state civil infractions" rather than misdemeanors:

(1) Failure to present a vessel's certificate of number upon the request of a peace officer;

(2) Failure to properly paint or attach the number from a vessel's certificate of number on the vessel, or to keep the number legible;

(3) Failure to properly display required decals;

(4) Failure to notify the secretary of state of a change of address;

(5) Violations of passing and right of way rules;

(6) Failure to operate vessels in "a careful and prudent manner" and at a safe stopping speed;

(7) Speeding violations;

(8) Failure to operate at slow-no wake speed under specified circumstances;

(9) Failure to operate counter-clockwise in certain waters and failure of water skiers to maintain a 100-foot distance from docks, rafts, buoyed or occupied bathing areas, and moored or anchored vessels;

(10) Operating in prohibited areas;

(11) Water skiing, sledding, or surfboarding after dark;

(12) Water skiing, sledding, or surfboarding without a required observer or proper rear-view mirrors;

(13) Improperly sitting, standing, or walking on vessels;

(14) Interfering (including intentionally rocking, tipping, or jostling) with the operation of a vessel by someone outside the vessel;

(15) Failure of divers to place the proper buoys or flags and of divers and other vessels to maintain the proper distance from such buoys or flags;

(16) Violations of provisions regulating the placement of buoys or beacons;

(17) Violations of the prohibition against local governments enacting ordinances not in compliance with the bill or act; and

(18) Violations of the regulations regarding swimming at public beaches.

Citations: definition and form. The bill would define "citation" and establish procedures for issuing and tracking citations paralleling existing procedures in the Michigan Vehicle Code. A "citation" would mean "an original and [three] copies of a written notice to appear [in court], . . . upon which a peace officer record[ed] an occurrence of a person's alleged violation of a marine law." ("Citation" is defined in the state civil infractions chapter, Chapter 88, of the Revised Judicature Act to mean "a written complaint or notice to appear in court upon which a law enforcement officer records the occurrence or existence of [one] or more state civil infractions by the person cited.")

The form of the citation would have to be approved by the secretary of state, attorney general, state court administrator, and the director of the Department of State Police. The original would be filed with the court, the first copy would (presumably) be kept by the law enforcement agency, the second copy would be issued to the alleged violator if the violation were a misdemeanor, and the third copy would be issued to the alleged violator if the violation were a state civil infraction.

Each citation would have to contain the following information: the name of the plaintiff (the state or the political subdivision); the name and address of the person to whom the citation was issued; the alleged marine law violation; the place where, and the time at which, the person was required to appear; and the court's telephone number.

The citation also would have to inform the alleged violator that he or she could do one of three things by the time specified on the citation for appearance in court:

(1) Admit responsibility for the state civil law infraction (in person, by "representation," or by mail);

(2) Admit responsibility for the state civil infraction "with explanation" in person, by representation, or by mail (the citation could specify a hearing date; in any case, it would have to inform the person that if he or she wanted to admit responsibility "with explanation" other than by mail or wanted to have a hearing, he or she would have to apply to the court - in person, by mail, or by telephone -- before the specified appearance date and obtain a scheduled date and time to appear for a hearing);

(3) Deny responsibility for the state civil law infraction by doing one of two things: (a) Appear in person, without being represented by an attorney, for an informal hearing before a district court magistrate or a judge; or (b) appear in court for a formal hearing before a judge, with the opportunity of being represented by an attorney.

Each citation also would have to contain a notice in boldfaced type that failure to appear as required would result in a default judgment against the person cited. The requirement for "timely appearance" would be met by applying to the court for a hearing (made before the specified appearance date) or by returning the citation with full payment of applicable civil fines and costs.

A complaint signed by a peace officer would be treated as made under oath under the following circumstances: the violation alleged in the complaint (a) was either a state civil infraction or a minor offense (as defined in the Code of Criminal Procedure) and (b) occurred or was committed in the officer's presence (or under circumstances that allowed the officer to issue a citation under the bill), and (c) the complaint contained a statement immediately above the date and signature of the officer that said "I declare under the penalties of perjury that the statements above are true to the best of my information, knowledge, and belief."

Citation records. Books of consecutively numbered citations would be issued to peace officers whose duties could or would include enforcement of marine law. ("Peace officer," under NREPA, includes sheriffs and sheriff's deputies (including certain special deputies authorized to enforce marine safety laws), village or township marshals, any municipal police officers, state police officers, the director of the DNR and conservation officers employed by the DNR.) Citation books would be issued by police chiefs, sheriffs, the director of the Law Enforcement Division of the Department of Natural Resources (DNR), and the director of the Department of State Police (who also would obtain receipts from each officer to whom a citation book was issued).

Within 48 hours after going off duty, a peace officer who had issued a marine law violation citation would be required to deliver all copies of the citation ("duly signed") to either the officer's police chief or to someone authorized by the police chief to receive citations. Within three days of the date of the citation (excluding Saturdays, Sundays, and legal holidays) the police chief (or the person authorized by him or her) would be required to deposit the citation with the court having jurisdiction over the offense. "Depositing" a citation with a court could be done by mailing the original of the citation by first class mail to the court not later than two days after the date of the citation.

If a citation were spoiled, mutilated, or voided, the issuing peace officer would have to endorse it with a statement fully explaining its condition and provide his or her chief officer (or that officer's authorized designee) with the statement.

As in the case of the traffic violations of Michigan Vehicle Code, the state treasurer would be required to establish procedures to ensure the accountability of all jurisdictions processing marine law violation citations. Citation records and notices would have to be made available for public inspection, with the records (showing the issuance and subsequent disposition) being maintained ("complete") for at least five years. The fiscal officer of the local unit of government would be required to conduct a complete audit of citation records at least every year, and the state treasurer could audit the citations records at any time.

It would be a misdemeanor, punishable by imprisonment for up to one year or a fine of up to \$500 (or both), to do any of the following:

- * knowingly falsify a citation or copies of a citation, or a record of the issuance of a citation;
- * knowingly dispose of a citation, copy, or record other than as required in the bill;
- * attempt to incite or procure someone else to falsify or incorrectly dispose of citations, copies, or records.

Issuing citations. A peace officer would be authorized to issue citations for marine law violations that were civil infractions under the following circumstances: (a) if the peace officer witnessed someone committing a marine law violation which was a civil infraction, (b) if, based on personal investigation, the peace officer had reasonable cause to believe that the operator of a vessel involved in an accident was responsible for a state civil infraction in connection with the accident, or (c) if, based on the peace officer's personal investigation of a complaint by a witness to an alleged marine safety violation, the officer had reasonable cause to believe that the operator of a vessel was responsible for a marine law civil infraction and the officer had written approval from the prosecuting attorney (or the attorney for the political subdivision having jurisdiction) to issue the citation. The officer would be required to inform the person of the alleged marine law civil infraction(s) and to deliver the third copy of the citation to the alleged offender. (The bill also would allow a peace officer who witnessed someone committing a marine law civil infraction (a) to direct the person to either bring their vessel to a stop or to maneuver it in a manner that permitted the officer to come alongside, (b) to detain the person temporarily to make a record of the vessel check, and (c) pursue, stop, and detain the person outside the political subdivision where the violation occurred to issue a citation.)

Nonresidents. Nonresidents who were stopped or detained by a peace officer for a state civil infraction under the bill who had with them an identification document would have that document taken by the peace officer as security for the nonresident's appearance in court and satisfaction of any order that might be issued. The officer would issue a citation and, within 48 hours of taking the identification document, would deliver the document to the court (or to the applicable chief police officer or person authorized by the

chief police officer to receive citations and identification documents). If the identification document were delivered to the chief police officer, he or she would be required to deposit the document and citation with the court in accordance with the bill's requirements for citations. Failure to deliver the identification document would be contempt of court.

Instead of surrendering an identification document (or before appearance in court), a nonresident could guarantee his or her appearance by leaving (with the officer or the court) either a guaranteed appearance certificate or a sum of money not more than \$100. (The bill would define "guaranteed appearance certificate" to mean "a card or certificate containing a printed statement that a surety company authorized to do business in this state guarantee[d] the appearance of the person whose signature appear[ed] on the card or certificate, and that the company, if the person fail[ed] to appear in court at the time of a scheduled informal or formal hearing or to pay any fine or costs imposed [under the bill], [would] pay any fine, costs, or bond forfeiture imposed on the person in a total amount not to exceed \$200.")

If a judge or district court magistrate was available for an immediate appearance, and a nonresident to whom a citation had been issued demanded an immediate hearing, the peace officer would have to take the nonresident before the judge or magistrate immediately for a hearing on the alleged state civil infraction. After completion of the hearing or after the nonresident admitted responsibility, the court would have to return the nonresident's identification if any of the following occurred: (a) judgement was entered for that person; (b) an adverse judgement against that person was satisfied; or (c) the person provided the court with a guaranteed appearance certificate or a sum of money not to exceed \$100 as security for payment of any fines or costs ordered.

If the nonresident defendant requested a formal hearing, the court would have to schedule a hearing as provided by the Revised Judicature Act, but would keep his or her identification document until final resolution of the matter unless he or she left a guaranteed appearance certificate or a deposit of money.

An officer receiving a guaranteed appearance certificate or deposit of money would be required to (a) give the person a receipt and a written citation, and (b) within 48 hours of receipt, deposit the certificate or money with the court, the chief officer of his or her department, or the authorized agent of his or her chief officer. As in the case of citations and identification documents, the chief officer (or his or her authorized agent) would have to deliver a certificate or sum of money to the court in the same manner as prescribed in the bill for delivering citations, and failure to deliver certificates or deposits of money in compliance as required would be embezzlement of public money.

If someone who posted a guaranteed certificate or deposit failed to appear as required, the court would enter a default judgment against him or her, and he or she would forfeit the certificate or the money deposited. The court would have to apply any forfeited money to any civil fine or costs ordered under the bill.

Penalties. Anyone found to be responsible (or responsible "with explanation") for a state civil infraction could be ordered by the court to pay a civil fine of not more than \$100.

Libraries. Civil fines ordered under the bill 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 violations of state penal laws. This provision would be expressly intended to maintain a source of revenue for public libraries that previously received criminal fines for the misdemeanor violations that the bill would change to civil infractions.

Other provisions. Under the bill, a marine law violation that was designated a state civil infraction would not be a lesser included offense of a criminal offense.

If a peace officer issued a citation under the section of the act regulating warrantless arrests for misdemeanors [section 80168] for a misdemeanor punishable by imprisonment for not more than 90 days, the court could accept a plea without receipt of the sworn complaint, but could not make a docket return on the complaint until the officer signed the complaint. If the defendant pled not guilty, the court could not hold further proceedings until a sworn complaint was filed with the magistrate or judge. A court also couldn't issue an arrest warrant to a person so cited until a sworn complaint against the person was filed.

The bill would delete the existing definition of "long term incapacitating injury" and instead define (and use in its place) "serious impairment of a body function." Currently, the act says that someone who causes a long term incapacitating injury while "drunk boating" is guilty of a felony. The bill would substitute "serious impairment of a body function" for "long term incapacitating injury" and define the latter to include, but not be limited to, one or more of the following: loss of (or loss of the use of) a limb, hand, foot, finger, thumb, eye, or ear; loss or substantial impairment of a bodily function; serious visible disfigurement; a comatose state that lasted for more than three days; measurable brain damage or mental impairment; a skull fracture or other serious bone fracture; or subdural hemorrhage or hematoma.

The bill would increase to \$100 (from the current \$25) the maximum amount of money that a nonresident would have to deposit for his or her appearance; the bill also would allow nonresidents to leave a guaranteed appearance certificate instead of a sum of money.

The bill would prohibit political subdivisions from enacting local ordinances that provided a criminal penalty for what would be civil infractions under the bill. Political subdivisions also couldn't impose penalties in excess of those proposed in the bill, nor could they designate as a state civil infraction or a municipal civil infraction anything that was a felony or misdemeanor under the bill or act. Local ordinances in conflict with the bill or the act would be void to the extent of the conflict.

A court that collected an administrative order processing fee [under section 80193] would be required to send 60 percent of the collected amount to the secretary of state to defray expenses he or she incurred under the act.

Grandfather clause. Section 4a of chapter 1 of the Revised Statutes of 1846 (MCL 8.4a) would apply to violations of the marine safety part (part 801) of the Natural Resources and Environmental Protection Act (and to violations of local ordinances substantially corresponding to NREPA) if the violation (a) occurred before the effective date of the bill and (b) would otherwise be designated a civil infraction under the bill.

Repealer. The bill would repeal the section of the act [80153] that prohibits people from sitting, standing, or walking on any part of a vessel, operated on the waters of the state, that wasn't specially designed for that purpose. (Note: The bill in its current form includes this section and would amend it to make a violation of this part of the act a state civil infraction.)

House Bill 4505 would amend the Revised Judicature Act (MCL 600.113 et al.) to specify that, except as otherwise stated in the act, civil infractions involving marine law violations would be governed by the marine safety part (part 801) of the Natural Resources and Environmental Protection Act (Public Act 451 of 1944). If the governing body of the district approved, the district court would be allowed to establish a traffic bureau which could collect civil fines and costs for, and oversee admissions of, marine law civil infractions under the marine safety part of NREPA in the same fashion that fines and costs are collected for civil infractions under the Michigan Vehicle Code. District court magistrates would have the duty to arraign and sentence upon pleas of guilty or nolo contendere for violations of the marine safety part of NREPA, except for "drunk boating" (OUIL or OWI) violations. However, magistrates could have jurisdiction to arraign defendants and set bond with regard to these drunk boating violations.

House Bill 4506 would amend the Code of Criminal Procedure (MCL 764.1e) to include state civil infraction citations under provisions in the criminal code which currently allow complaints based on traffic citations issued by peace officers to be treated as made under oath. A complaint based upon a state civil infraction citation and signed by an officer would be treated in the same fashion as one based on a minor offense committed in the signing officer's presence.

Tie bar, effective date. None of the bills could take effect unless all of the bills were enacted. The bills would take effect on January 1, 1996.