



**House
Legislative
Analysis
Section**

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

**LIMIT BOAT LIVERY OPERATORS'
LIABILITY**

**House Bill 5518 (Substitute H-1)
First Analysis (12-4-96)**

**Sponsor: Rep. John Llewellyn
Committee: Conservation, Environment,
and Great Lakes**

THE APPARENT PROBLEM:

Public Act 351 (enrolled House Bill 5006) of 1994 created a new act that placed certain limits on the civil liability of "equine professionals" (people who, for compensation, teach equine activities; rent equines, equipment or tack; or board, train, or breed equines) or sponsors of "equine activities" (including pony, 4-H, hunt, and riding clubs; school- or college-sponsored classes; therapeutic riding programs; stables or farm owners; and operators, instructors, or promoters of stables, equine clubhouses, ponyride strings, and fairs or arenas where equine activities are held). People in the canoe livery industry have requested similar legislation.

THE CONTENT OF THE BILL:

The bill would add a new section to Part 445 of the Natural Resources and Environmental Protection Act (NREPA), which regulates charter and livery boat safety, to specify that someone who rented or leased a "Class E" vessel from a boat livery operator who had posted certain warnings accepted the dangers inherent in that vessel's operation. (Under the NREPA, a Class E vessel is defined as one that carries not more than six passengers for hire and is either used primarily as a river-drift boat that is propelled primarily by hand, or is 18 feet or less in length and operated primarily on a river or tributary to the Great Lakes, Lake St. Clair, or their connecting waterways.)

Boat Livery Requirements. Under the bill, boat livery operators who rented or leased Class E vessels for use on state waters would be required to do the following:

**** Post, and reasonably maintain, a notice** ("in conspicuous locations") specifying that anyone who rented or leased Class E vessels accepted certain specified dangers inherent in operating those vessels as required by administrative rules.

**** Maintain** ("in a reasonably prudent manner") each Class E vessel (and article of equipment associated with

the vessel) he or she offered or made available to the public.

**** Warn people who intended to rent or lease Class E vessels of water-related hazards known** (or that should reasonably have been known) by the livery operator.

Specified Dangers. The bill would specify that the dangers inherent in the operation of Class E vessels included the risk of injury from any of the following:

*** Capsizing or loss of control of the vessel due to a current** ("or other water condition"), unless due to defects in the boat livery vessel or equipment.

*** Striking objects that were above the water, that were beneath the water but detectable by a reasonably prudent person, or that were beneath the water and not detectable by a reasonably prudent person but for which the boat livery operator had provided warning.**

*** Failure to heed clearly posted signs or warnings.**

MCL 324.44522a

FISCAL IMPLICATIONS:

Although fiscal information is not available on the substitute bill, the House Fiscal Agency reported that the bill as introduced would have no fiscal implications (11-26-96). (The committee substitute incorporates several technical and clarifying amendments.)

ARGUMENTS:

For:

People who voluntarily participate in inherently hazardous recreational activities should take responsibility for their actions and not be able to sue for injuries resulting from these unavoidable hazards. Certain recreational activities -- including skiing, boating, and horseback riding -- have inherent hazards. Despite -- and,

House Bill 5518 (12-4-96)

sometimes, perhaps even because of -- these hazards, many people enjoy exercising their skills in these areas. Problems can arise, however, to businesspeople engaged in providing access to these sports, either in the form of providing actual sites (such as ski resorts or horse trails) and/or providing public rental of equipment and accessories necessary for participating in these sports. While it is important that people who provide access to these sports provide safe (and, in some cases, safety) equipment, it also is important for people who participate in these sports through renting equipment and access to sites take responsibility for their participation and recognize the dangers inherent in such participation. State law has recognized the need to protect businesspeople involved in the skiing industry and those involved in various horse-related activities. The Ski Area Safety Act (Public Act 199 of 1962) and the Equine Activity Liability Act (Public Act 351 of 1994) both protect business people in their respective industries from certain kinds of lawsuits. For example, in *Schmitz v. Cannonsburg Skiing Corp.* (1988, 428 N.W. 2d 742, 170 Mich. App. 692, appeal denied) the court ruled that the section of the Ski Area Safety Act added by Public Act 86 of 1981 provided for assumption of risks and thus barred suit by the decedent skier's personal representative against the ski resort arising out of the skier's collision with a tree on a ski slope. Even more recently, *Skene v. Fileccia* (1995, 539 N.W. 2d 531, 213 Mich. App. 1) held, in part, that the Ski Area Safety Act was designed to cut down on liability of owners and operators for injuries resulting from inherent dangers of the sports, as opposed to from negligence of area operators. Reportedly, canoe liveries have been subject to lawsuits involving the reckless behavior of people renting their equipment, despite the fact that the equipment itself was not defective. In order to ensure the continued viability of canoe and boat liveries, and their ability to obtain liability insurance, similar legislation is needed. The bill would establish an assumption in law that someone renting or leasing a livery boat or canoe accepted the dangers involved in the operation of these vessels and thus would provide limited liability protection for boat and canoe liveries.

Against:

It is unclear as to what problem, if any, the bill would address, and therefore whether or not it is necessary. No evidence was presented that a problem currently exists with regard to boat liveries. Given that the civil justice system provides incentives for safe and responsible behavior, it could be argued that reducing a concern for liability could provide a kind of disincentive for careful management of a business. As in the case of the Equine Activity Liability Act, moreover, the bill would limit boat and canoe livery owners' liability without any corresponding increase in their responsibilities. In

contrast, in return for having their liability limited, ski resort owners subjected themselves to state inspections, licensing, and regulation.

Response:

The bill would simply apply to boat and canoe liveries a statutory policy that already applies to other risky recreational activities, such as horseback riding and skiing. If people choose to participate in such enjoyable but inherently risky activities, they at least should take responsibility for their participation. Boat and canoe liveries would still remain liable for conditions over which they reasonably could be expected to maintain some control, including the condition of their equipment and accessories. But they would be protected from irresponsible behavior of people who rent or lease their equipment, and properly so. For example, if someone capsized because of water conditions over which a livery had no control, or if they ignored a clearly posted sign or warning, then under the bill the renter would be presumed to accept responsibility for any injuries resulting from such circumstances.

SUGGESTED AMENDMENTS:

The Department of Natural Resources recommends replacing references to "Class E vessels" with "boat or canoe."

POSITIONS:

The Department of Natural Resources indicated its support for the bill to the committee. (12-3-96)

The Michigan Recreational Canoeing Association indicated its support for the bill to the committee. (12-3-96)

Analyst: S. Ekstrom

■ 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.