

MOTOR CARRIER CIVIL INFRACTIONS

**House Bill 4474 (Substitute H-1)
First Analysis (10-14-97)**

**Sponsor: Rep. Kirk Profit
Committee: Transportation**

THE APPARENT PROBLEM:

Criminal penalties for minor safety violations of the truck safety laws can be excessively costly and time-consuming to adjudicate, both for law enforcers and law violators. For example, a misdemeanor charge requires prosecutors to meet a high evidentiary standard, proving guilt beyond a reasonable doubt. Were such minor violations considered to be civil infractions, the evidentiary standard would be lower, essentially requiring that defendants acknowledge responsibility and indicating an intent to take corrective action. Currently, most violations of the Motor Carrier Safety Act (Public Act 181 of 1963) are misdemeanors punishable by up to 90 days' imprisonment and/or a fine of up to \$100. Exceptions include people who violate the act's requirements regarding operating with serious safety defects (who are subject to fines of up to \$300), violations involving the transportation of hazardous waste materials (up to 90 days imprisonment and/or a fine of up to \$500), and failure to comply with a "shut down" order (a misdemeanor punishable by a fine of up to \$1,000 and/or imprisonment up to 90 days).

a civil fine of not more than \$250. The bill also specifies

Although serious violations of the Motor Carrier Safety Act justify misdemeanor penalties, some find problematic the use of criminal penalties for general and less severe violations, the majority easily and necessarily correctable from the perspectives both of regulator and regulated party. To address this incongruity between violation and penalty, legislation has been proposed to replace excessive criminal sanctions with responsibility for civil infractions.

THE CONTENT OF THE BILL:

House Bill 4474 would amend the Motor Safety Carrier Act to make truckers' general violations of that act civil infractions, instead of misdemeanors.

The bill defines civil infraction to mean "an act or omission prohibited by law which is not a crime as defined in section 5 of the Michigan Penal Code, and for which civil sanctions may be ordered." Under the bill, those responsible for a civil infraction may be assessed

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that fines collected "shall be exclusively applied to the support of public libraries and county law libraries in the same manner as is provided by law for penal fines assessed and collected for a violation of a penal law of the state in order to maintain a continue source of revenue for public libraries which previously received penal fines for misdemeanor violations."

In addition, House Bill 4474 specifies that a violation that is a civil infraction of the act would be required to be adjudicated and enforced in the same manner as civil infractions are adjudicated and enforced in the Michigan Vehicle Code, except that a court would be prohibited from waiving a civil fine and costs upon receipt of certification by a law enforcement agency that repair of defective equipment was made before the appearance date on the citation. Further, a default in the payment of a civil fine or costs could not be collected for the enforcement of a judgment under chapter 40 of the Revised Judicature Act (which allows for ex parte applications to the court showing that the person against whom a claim is asserted is not subject to the judicial jurisdiction of the state), or under chapter 60 of Public Act 236 of 1961 (which prescribes the enforcement of judgments).

House Bill 4474 also would allow any police officer or motor carrier officer of the Department of State Police who has reason to believe that the driver of a vehicle is operating in violation of the act to require the vehicle to stop and undergo an inspections. If after an investigation the officer determines a violation of the act, the driver may be detained for the purpose of making a record or vehicle check and issuing a citation to the driver, motor carrier or other responsible person. If the officer has reason to believe a violation of this act has occurred, he or she may issue a citation.

Violations involving serious safety defects would be subject to a civil fine of no more than \$300 for each violation. Violations for the transportation of hazardous waste materials and the failure to comply with shut down orders would remain misdemeanors with their current penalties.

receive as much as 80 percent of their funding from penal fine revenue, although most libraries report this

Finally, House Bill 4474 also would extent to any driver of a commercial motor vehicle that is being used in the delivery of dairy products the exemption from the work rule requirements of the Motor Carrier Safety Act that pertains to drivers whose total driving time does not exceed 40 hours in any period of 7 consecutive days.

MCL 480.1a et al.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill would have some fiscal impact if the courts, on average, imposed higher fines as a result of the increased maximum fine. In this scenario, state revenues would increase in proportion to the increase in average fine levels. Local revenue would also increase as the bill provides that the civil fines imposed under the act be used to support public libraries and county law libraries just as the misdemeanor fines do under current law. (10-14-97)

ARGUMENTS:

For:

Most violations of the Motor Carrier Safety Act are not severe and would more appropriately be adjudicated and enforced as civil infractions that acknowledge driver responsibility, rather than misdemeanors that charge driver criminality. This shift would ease both enforcement and compliance, since financial penalties both are more easily collectible by government and also more easily payable by violators. Further, criminal misdemeanor penalties require that higher standards of proof be met in order to ensure successful prosecutions. The bill would shift that standard from "beyond a reasonable doubt" to "a preponderance of evidence."

For:

The legislation would continue the decade-old effort to change criminal penalties to civil infractions, easing the burdens of government, including those burdens carried by prosecutors, as well as those claimed by defendants.

For:

Historically, penal fines (including those paid by truckers who violate motor carrier safety laws), have been collected by county governments and distributed to public libraries and county law libraries. In fact, this penal fine earmarking for public libraries began with the Michigan Constitution of 1835. According to the Library of Michigan, which derived its information from 1997 public library annual reports, penal fine income is the source of about 13 percent of all funding for Michigan public libraries, providing more than \$24.4 million of revenue annually. Smaller and rural libraries tend to

source constitutes under 30 percent of their revenue. This legislation seeks to ensure that civil infraction fines

will replace penal fines, and the expectation of some is that revenue generated for libraries by this bill will be greater than the revenue currently available from penal fines. What's more, some argue that this bill may prevent cities from adopting local parallel civil infraction ordinances that "bleed off" penal fine money that is rightfully due libraries.

Response:

Although it is true that municipalities are empowered to pass local ordinances that parallel state law, and true that the most common of these include traffic regulations, and also true that fines collected for the violation of local ordinances are distributed one-third for the municipality and two-thirds to the county general fund, there are no reliable data to demonstrate that the adoption of parallel ordinances effectively undercuts public library funding. Indeed, local funding for libraries has not decreased since parallel ordinances have been adopted, so it seems likely that some of the fine money generated through parallel ordinances may make its way back to (or is replaced by other and greater revenue sources for) library support.

POSITIONS:

The Michigan Library Association supports the bill. (10-10-97)

The Department of State Police support the bill. (10-10-97)

The Michigan Trucking Association supports the bill. (10-10-97)

Analyst: J. Hunault

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