

Legislative Analysis



WILDLIFE VIOLATOR COMPACT

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House Bill 5021 as enrolled
Public Act 235 of 2004
Sponsor: Rep. Howard Walker

House Committee: Conservation and Outdoor Recreation
Senate Committee: Natural Resources and Environmental Affairs
Second Analysis (8-30-04)

BRIEF SUMMARY: The bill would amend the Natural Resources and Environmental Protection Act to permit the governor to enter the state in the Wildlife Violator Compact.

FISCAL IMPACT: The bill would have no fiscal impact on the state or local units of government.

THE APPARENT PROBLEM:

Under the Natural Resources and Environmental Protection Act (NREPA), any person who violates a state law or order of the Natural Resources Commission relating to wildlife may be subject to a fine, imprisonment, or license suspension or revocation, depending on the nature of the violation. When a resident commits a violation, he or she is usually issued a citation and is permitted to go about his or her business after complying with (or agreeing to comply with) the provisions of the citation. However, when a nonresident commits a violation, he or she is usually treated differently so as to assure their compliance with state wildlife laws and the provisions of the citation. The nonresident may be arrested, forced to post bond, held in jail, or taken immediately to court to resolve the matter. Michigan residents who commit a wildlife violation in another state would be treated in the same manner.

In addition, the state cannot prohibit a person who commits a wildlife violation in another state, and who subsequently applies for a license in Michigan, from hunting or fishing in this state. This presents serious problems with the management of the state's precious natural resources, as such individuals are likely to improperly or unlawfully take game in the state. In response to these problems, several other states, including Indiana, have entered into the Interstate Wildlife Violator Compact. Generally speaking, by entering the compact, the state would treat non-residents who violate state wildlife laws (and who are residents of another participating state) in the same manner as Michigan residents who violate state wildlife laws, and would suspend the license (e.g., hunting or fishing) of a Michigan resident who violates the wildlife laws of another state if that individual's license issued by a participating state is suspended or if such a violation is grounds for licensure suspension in this state. Legislation has been introduced that would permit the governor to enter the state in the Wildlife Violator Compact.

THE CONTENT OF THE BILL:

The bill would amend the Natural Resources and Environmental Protection Act to permit the governor to enter the state in the Wildlife Violator Compact. The compact would be in substantially the following form:

Article 1: Findings, Declaration of Policy, and Purpose

Article 1 lists a series of 11 findings that support the state's entering into the compact. In its list of findings, the article states that 1) wildlife resources are managed in trust by the respective states for the benefit of all residents and visitors; 2) the protection of the wildlife resources of a state is materially affected by the degree of compliance with state statutes, laws, regulations, ordinances, and administrative rules relating to the management of such resources; 3) the preservation, protection, management, and restoration of wildlife contributes immeasurably to the aesthetic, recreational, and economic aspects of such natural resources; 4) wildlife resources are valuable without regard to political boundaries; therefore, every person should be required to comply with wildlife preservation, protection, management, and restoration laws, ordinances, and administrative rules and regulations of the participating states as a condition precedent to the continuance or issuance of any license to hunt, fish, trap, or possess wildlife; 5) violation of wildlife laws interferes with the management of wildlife resources and may endanger the safety of individuals and property; 6) the mobility of many individuals who violate state wildlife laws requires the maintenance of an open communication system among states; 7) in most instances, a person who is cited for a wildlife violation in a state other than his or her home state is required to post collateral or a bond to secure appearance for a trial at a later date, is taken into custody until the collateral or bond is posted, or is taken directly to court for an immediate appearance; 8) the purpose of the enforcement practices is to ensure compliance with the terms of the wildlife citation; 9) in most instances, a person receiving a wildlife citation is his or her home state is permitted to accept the citation at the scene of the incident and immediately continue on his or her way after agreeing or being instructed to comply with the terms of the citation; 10) the enforcement practices cause an unnecessary inconvenience and hardship for an individual who is unable to post collateral, furnish a bond, stand trial, or pay a fine, and who is then required to remain in custody; and 11) current enforcement practices consume too much time for law enforcement agencies.

In addition to the list of findings, the article contains a separate list of eight policies of the participating states. The stated policies are 1) to promote compliance with state wildlife laws; 2) to recognize the suspension of wildlife licenses and treat such suspensions as if they occurred in a violator's home state; 3) permit a violator to accept a wildlife citation and proceed on his or her way without delay, regardless of whether the violator was a resident of the state that issued the citation, and provided that the violator's home state is a party to the compact; 4) report to the appropriate participating state any conviction recorded against a person from another state; 5) allow the home state to recognize and treat convictions recorded against its residents elsewhere as if they had occurred in the home state; 6) extend cooperation to its fullest extent among the participating states for enforcing

compliance with a wildlife citation; 7) maximize effective use of law enforcement; and 8) assist court systems in the efficient disposition of wildlife violations.

Finally, Article 1 provides that the purpose of the compact is to provide a means by which participating states can join in a reciprocal program to achieve the policies cited above and to provide for the fair and impartial treatment of individual who violate the wildlife laws of the participating states, in recognition of the individual's rights to due process and the sovereign status of each participating state.

Article 2: Definitions

Among other definitions, Article 2 defines "wildlife" to mean all species of animals including, though not limited to, mammals, birds, fish, reptiles, amphibians, mollusks, and crustaceans, which are defined as "wildlife" and are protected or otherwise regulated by state statute, law, regulation, ordinance, or administrative rule in a participating state. A "wildlife law" is defined to mean any state statute, state law, state regulation, state ordinance, or state administrative rule developed and enacted for the management of wildlife resources and their uses. A "wildlife violation" is any cited violation of a state statute, state law, state regulation, state ordinance, or state administrative rule developed and enacted for the management of wildlife resources and the uses thereof.

Article 3: Procedures for the Issuing State

Under Article 3, a wildlife officer of the issuing state would be required to issue a citation to a non-resident violator as if that individual were a resident of the issuing state and would not require that individual to post collateral to secure appearance if the officer receives the recognizance (i.e., agreement) of the violator that he or she will comply with the citation, and provided that the violator is a resident of a participating state. However, personal recognizance would be only be acceptable if it is not prohibited by state law or the compact manual, and if the violator provides the officer with adequate personal identification.

The licensing authority of the issuing state would be notified, by the appropriate official, of the conviction or the violator's failure to comply with the citation. Once notified of the conviction or failure to comply, the issuing state would notify the licensing authority of the violator's home state.

Article 4: Procedure for the Home State

Once the licensing authority of the home state is notified of a conviction or failure to comply with a citation in the issuing state, it would notify the violator, initiate suspension proceedings, and suspend the violator's license privileges in the home state until it receives satisfactory evidence from the issuing state that the violator has complied with the terms of the citation. In addition, the licensing authority of the home state would enter the conviction in its records as if the violation occurred there, for the purpose of suspending the violator's privileges. The home state licensing authority would maintain a record of actions taken and report its actions to issuing states.

Article 5: Reciprocal Recognition of Suspension

All participating states would be required to recognize the suspension of license privileges of any person by any other participating state as if the violation resulting in the suspension had occurred in their state and would have been a basis for a mandatory suspension of license privileges in their state. Each participating state would communicate suspension information with other participating states in the manner required in the compact manual.

Article 6: Applicability of Other Law

Except as otherwise provided, nothing in the compact would be construed to affect the ability of any participating state to apply any of its own laws relating to license privileges to any person or circumstance, or to invalidate or prevent any arrangement between a participating state and a non-participating state concerning the enforcement of state wildlife laws.

Article 7: Compact Administrator Procedures

The head of each state licensing authority would each appoint one person to serve as compact administrator for the state. The various state compact administrators would form the board of compact administrators to administer the provisions of the compact and to serve as a governing body for resolving any matter pertaining to the operation of the compact. A state compact administrator could provide that an alternate stand in his or her place and carry out the duties of the compact administrator. However, the alternate would not be entitled to serve unless the board has been provided with written notification of the identity of the alternate.

Any action by the board would have to take place at a meeting with a majority of participating states being present. No action of the board of compact administrators would be binding unless the vote was taken at a meeting at which a majority of the board members present voted in favor of such action. The board would have to adopt bylaws consistent with the provisions of the compact and the laws of a participating state for conducting its business, and develop procedures and forms necessary for the administration of the compact.

Finally, the board could accept any grant or donation from a state, the federal government, or a governmental agency for any of its purposes and functions, and contract with, or accept services or personnel from, any governmental or intergovernmental agency, individual, firm, corporation, or any nonprofit entity.

Article 8: Entry Into, and Withdrawal From, the Compact

To enter into the compact, a state would submit to the chairperson of the board of compact administrators, a resolution of ratification executed by the authorized officials of the state. The resolution would include a citation of the authority under which the state is empowered to become a participating state, an agreement to comply with the terms and provisions of

the compact, and an agreement that recognizes that entry into the compact is with each participating state and that any state that may become a participating state at a later date. The applying state would specify the effective date of its entry into the compact, although entry would have to be within 60 days after notice has been given that the board of compact administrators has received the resolution.

Any participating state could withdraw from participation by providing each participating state compact administrator an official written notice of its intent to withdraw. Withdrawal from the compact would become effective 90 days after official notice is provided.

Article 9: Amendments to the Compact

Amendments to the compact would have to be presented to the chairperson of the board of compact administrators, would require the endorsement of every participating state in order to be adopted, and would become effective 30 days after the last endorsement by a participating state. A participating state would be considered to have endorsed a proposed amendment if it fails to respond to the board chairperson within 120 days after receiving the proposed amendment.

Article 10: Construction and Severability

The compact would have to be liberally construed so as to effectuate its stated purposes. In addition, the provisions of the compact would be severable and if any provision or portion is declared to be contrary to the constitution of the United States or of any individual state, or its applicability to any participating state or inapplicable to any government, agency, individual, or circumstance is held invalid, the validity of the remainder of the contract would not be affected. Moreover, if the compact is held to be contrary to the constitution of any participating state, it would remain in full force and effect in the remaining states.

BACKGROUND INFORMATION:

The compact was originally developed between Colorado, Nevada, and Oregon in 1989. Since that time numerous other states have also entered into the compact. These states include Arizona, California, Georgia, Idaho, Indiana, Iowa, Maryland, Minnesota, Missouri, Montana, New Mexico, North Dakota, Utah, Washington, and Wyoming. West Virginia enacted legislation in 1990 to enter the compact, but has postponed formal implementation of it until neighboring states also enter into the compact. In addition, in recent years, South Dakota, Tennessee, Kentucky, Oklahoma, Maine, and Alaska have also had legislation introduced that would have entered them into the compact. Legislation in Pennsylvania (HB 746) passed the House of Representatives in July 2003. Finally, Nebraska and New Hampshire, while not members of the compact, both have laws that recognize hunting and fishing license revocations from other states.

ARGUMENTS:

For:

Entering into the wildlife violator compact helps the state in two ways. First, it eases the burdens that are placed on nonresidents who violate the wildlife laws in this state and state residents who violate wildlife laws in another state. As stated earlier, nonresidents are often required to post bond, confined in jail, or are taken directly to court after being issued a citation for a violation of the state's wildlife laws. In addition to being a burden on nonresidents, this also is a burden for conservation officers. To this end, the compact (and the bill) provide that it is the policy of the participating states to allow a violator, with certain exceptions, to accept a citation and, without delay, proceed on his or her way. In particular the bill and the compact provide that citations issued to nonresidents of another participating state shall be treated in the same manner as though the person were a resident of the issuing state.

In addition, the bill allows the state to recognize the suspension of a hunting or fishing license that is issued in another state, thereby permitting the state to prohibit that person from obtaining a license here. This is particularly helpful given that Indiana has already entered into the compact. The bill provides that upon receiving a report from the issuing state for the failure of a violator to comply with the terms of the citation, the home state shall notify the violator and shall initiate suspension action in accordance with the home state's suspension procedures and shall suspend the violator's license privilege until evidence of the violator's compliance with the citation has been provided to the home state. The bill further provides that upon receiving a report of a conviction in the issuing state, the home state shall enter the conviction in its records and treat that conviction as though it occurred in the home state for the purpose of the suspension of license privileges. Finally, the bill provides that all participating states shall recognize the suspension of license privileges of any person by any participating state as though the violation resulting in the suspension had occurred in their state and would have been the basis for a mandatory license suspension in their state.

Response:

The true impact on the state's wildlife and other natural resources will be rather limited. First, most of the other states that have already entered into the compact are out west. Secondly, the vast majority of hunting and fishing licenses are sold to state residents.

Rebuttal:

Having the state enter into the compact may encourage Ohio, Illinois, and Wisconsin to also join the compact. Indiana, Iowa, Minnesota and Missouri have already joined the compact and legislation has already passed the Pennsylvania House of Representatives. Furthermore, entry into the compact assists state residents who violate the wildlife laws in another state in remedying the situation in that other state, and it also makes the state aware of a violation by a state resident in the other state.

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■ 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.