

# Legislative Analysis



## IMMUNITY FROM LIABILITY FOR OWNERS OF NON-MOTORIZED BOAT LIVERIES

Mitchell Bean, Director  
Phone: (517) 373-8080  
<http://www.house.mi.gov/hfa>

**House Bill 4778 (Substitute H-1)**

**Sponsor: Rep. David Palsrok**

**Committee: Conservation, Forestry, and Outdoor Recreation**

### **First Analysis (11-7-05)**

**BRIEF SUMMARY:** The bill specifies that the owner of a non-motorized livery boat is not liable for an injury to, or the death of, a user that resulted from a risk inherent in the use or operation of the boat.

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

### **THE APPARENT PROBLEM:**

Michigan's natural resources are, undoubtedly, the crown jewel of the state's tourism industry, and include a vast system of lakes, streams, and rivers. In addition to the Great Lakes, the state has over 11,000 inland lakes as well as an extensive system of streams, rivers, and wetlands covering over 35,000 miles. As a result, the state leads the nation in the number of boat registrations.

In addition to thousands of privately registered boats, there are also many commercial boat, kayak, and canoe liveries. The liveries rent boats to many tourists, contributing a great deal to the state's economy. For example, a 2000 study by researchers at Michigan State University estimated that 165,000 canoes were rented in 1999, directly generating \$10.6 million in sales and \$3.7 million in personal income. Secondary effects included an additional \$17 million in sales and \$6 million in personal income.

In recent years the premiums for liability insurance—necessary for the operation of a boat livery—have steadily increased, and forced some smaller canoe liveries out of business. In addition, there is growing concern among livery operators over the possibility of being found liable if a renter were to be injured or killed while operating a canoe rented from a livery operator.

Some believe that, in order to protect the viability of the canoeing industry in the state, certain limits should be placed on the liability of boat livery operators.

### **THE CONTENT OF THE BILL:**

House Bill 4778 would amend the Natural Resources and Environmental Protection Act to specify that the owner of a non-motorized livery boat is not liable for an injury to, or the death of, a user that resulted from a risk inherent in the use or operation of the boat.

The bill defines "risk inherent in the use or operation of a non-motorized livery boat" to mean a danger or condition that is an integral part of the use of or operation of a non-motorized livery boat that is limited to one or more of the following:

- wave or other water motion;
- weather conditions;
- contact or maneuvers necessary to avoid contact with another vessel or a man-made object in or near the water;
- contact or maneuvers necessary to avoid contact with rock, sand, vegetation, or other natural objects in or near the water;
- malfunction of equipment, except for equipment owned by the owner of a non-motorized livery boat;
- failure to use or wear a personal flotation device or to have lifesaving equipment available, except if the owner of a non-motorized livery boat failed to provide the personal flotation device or live-saving equipment when required by law or regulation to do so;
- the actions of a vessel operator, except if the owner of a non-motorized livery boat leased or rented the livery boat to an operator who the owner knew or, in the exercise of reasonable care, should have known was disqualified by law or regulation from operating the livery boat; and/or,
- having a number of person in excess of the maximum weight or number approved for the livery boat on board, except if the owner of a non-motorized livery boat knowingly allowed the livery boat to leave the boat livery's premises with a number of persons in excess of the maximum weight or number approved for the livery boat on board or did not properly inform the user of the maximum number of persons approved for the livery boat.

Under the bill, "owner of a non-motorized livery boat" means the person who owns the non-motorized livery boat; the boat livery that rents, leases, or furnishes the non-motorized livery boat for use; or an employee or agent of the owner or boat livery. "User of the non-motorized livery boat" would mean a person who participates in the use or operation of the non-motorized livery boat regardless of whether the person rented or leased the non-motorized livery boat.

MCL 324.44520a

### ***BACKGROUND INFORMATION:***

Liability. In tort actions, the state follows the doctrine of modified comparative negligence. Under the doctrine, the trier of fact (e.g. the jury in a jury trial) considers the culpability of all parties involved in a matter, including the plaintiff, and adjusts the awards accordingly. Under the Revised Judicature Act (MCL 600.2957), "liability shall be allocated by the trier of fact, and in direct proportion to the person's percentage of fault." For instance, if it were determined that a plaintiff was 10 percent responsible for

his or her own injuries, the amount awarded to the plaintiff would be reduced by 10 percent.

Previous legislation. Over the past several years, similar legislation has been introduced on several occasions.

- House Bill 4140 of the 2003-2004 session, also introduced by Representative David Palsrok, passed the House but not the Senate.
- House Bill 6209 of the 2001-2002 session, introduced by Representative David Mead, was substantially identical to this bill, and died in committee.
- House Bill 5518 of the 1995-1996 session, introduced by Representative John Llewellyn, would have amended the NREPA to specify that someone who rented or leased a "class E" vessel from a boat livery operator who had posted certain warnings would be presumed to have accepted the dangers inherent in the operation of the vessel, including capsizing, striking objects, or the failure to heed clearly posted signs or warnings. The bill died on the House floor.
- House Bill 5374 of the 1993-1994 session, introduced by Representative Beverly Bodem, would have amended the Charter and Livery Boat Safety Act (which was later incorporated into the NREPA) to require the operator of a boat livery to post a notice specifying that persons who operated a livery boat would accept the inherent dangers of operating a livery boat; to reasonably maintain each notice; to reasonably maintain each livery boat and piece of equipment; and to warn someone who intended to operate a livery boat of known water-related conditions that could endanger the person. The bill also specified that a person who intended to operate a livery boat would accept the dangers inherent in the operation of the boat that are "obvious and necessary" including, among others not specifically enumerated, capsizing, striking objects, losing control due to water conditions, and the failure to heed a clearly posted sign or warning.

## ***ARGUMENTS:***

### ***For:***

The bill is necessary to protect the viability of the canoeing industry in the state. According to committee testimony when a similar bill was introduced during the last legislative session, liability insurance for boat liveries ranges between \$3,000 and \$8,000 and, in some cases, is expected to increase by 15 percent. For many smaller "mom and pop" businesses this increase can be detrimental to their economic viability. The cumulative effect of this would seriously cut into state and local tourism industries, of which boating liveries are an integral part.

Further, the bill takes a common sense approach to limiting liability of boat livery operators and provides them with protections similar to those provided to certain equine professionals, ski lift operators, and other providers of recreational activities. There is no question that boating—like other recreational activities—is an inherently dangerous

sport. As such, it is quite reasonable to expect boaters to be responsible for their own actions and accept those risks associated with boating. The bill, by immunizing boat livery operators from any injury or death due to the inherent risks of boating appears, on the surface, to be reasonable, given that one would certainly not expect boat livery operators to be liable for something beyond their control such as weather conditions, wave currents, and the actions of the boaters. This is not to say that the bill permits the boat livery operator to abscond from any responsibility to reasonably ensure the safety of the boaters. Rather, the bill includes several provisions that explicitly state that livery operators are not exempt from liability if their actions do not comport with statutory and regulatory requirements.

***Against:***

Opponents of the legislation in earlier sessions argued that the bill is unnecessary because the state follows the doctrine of modified comparative negligence, which reduces the amount awarded to the plaintiff based on the amount he or she contributed to his or her own injury. If it were determined that a plaintiff was 10 percent responsible for his or her own injuries, the amount awarded to him or her would be reduced by 10 percent. If the plaintiff is found to be more than 50 percent responsible for his or her own injuries, the plaintiff receives no award whatsoever. Knowing this, personal injury attorneys often do not take up these types of cases (often deemed to be "frivolous"), or will not argue that an individual was injured due to any of the listed inherent risks, as it is quite apparent that they will not prevail. Additionally, when juries determine the fault in a case involving a non-motorized livery boat, it already takes into account those risks that are "inherent in the use or operation of a non-motorized livery boat" (see the list enumerated in the bill). Further, this doctrine was not even in place at the time similar assumption of risk provisions were provided to other recreational activities. Had the doctrine been in place, those provisions would not have been necessary.

Additionally, under several appellate court decisions, the waivers typically filed by persons engaging in recreational activities—whereby they acknowledge and accept the risks inherent in engaging in the activity—are beginning to be honored by courts, which further limits the liability of boat livery operators. Furthermore, it is not clear that enacting this bill would do anything to reduce or slow the increase in liability insurance premiums.

***POSITIONS:***

The Department of Natural Resources is neutral on the bill. (11-3-05)

Legislative Analyst: J. Hunault

Fiscal Analyst: Kirk Lindquist

---

■ 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.