



Senate Fiscal Agency
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BILL ANALYSIS

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House Bill 4778 (Substitute S-1 as reported)
Sponsor: Representative David Palsrok
House Committee: Conservation, Forestry, and Outdoor Recreation
Senate Committee: Natural Resources and Environmental Affairs

Date Completed: 3-27-06

RATIONALE

Due to the State's extensive system of lakes, rivers, and streams, water-based recreational activities are considered a critical component of the State's tourism industry. Numerous commercial liveries rent kayaks, canoes, rowboats, and paddle boats to thousands of tourists, and reportedly contribute an estimated \$35 million annually to State and local economies.

In recent years, the premiums for liability insurance for those operating boat liveries evidently have increased steadily, forcing some to go out of business. Additionally, there is concern among livery operators related to the possibility of being found liable if a renter were to be injured or killed. Some people believe that the liability of boat livery operators should be limited in order to protect the viability of the industry.

CONTENT

The bill would amend Part 445 (Charter and Livery Boat Safety) of the Natural Resources and Environmental Protection Act to provide that the owner of a nonmotorized livery boat would not be liable for an injury to, or the death of, a user of the boat resulting from a risk inherent in the use or operation of such a boat.

The owner would have to post in conspicuous locations a notice specifying that a user accepted the risk inherent in the nonmotorized livery boat's use or operation.

Under the bill, "owner of a nonmotorized livery boat" would mean the person who owns the boat; the boat livery that rents,

leases, or furnishes the boat for use; or an employee or agent of the owner or boat livery.

"User of the nonmotorized livery boat" would mean a person who participates in the use or operation of the boat regardless of whether he or she rented or leased it.

"Risk inherent in the use or operation of a nonmotorized livery boat" would mean a danger or condition that is an integral part of the use or operation of a nonmotorized livery boat that is limited to any of the following:

- Wave or other water motion.
- Weather conditions.
- Contact or maneuvers necessary to avoid contact with another vessel or a manmade 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 boat's owner.
- Failure to use or wear a personal flotation device or to have lifesaving equipment available, unless the boat's owner failed to provide the device or equipment when required by law or regulation to do so.
- The actions of a vessel operator, unless the boat's owner leased or rented the boat to an operator whom the owner knew, or in the exercise of reasonable care should have known, was disqualified by law or regulation from operating the livery boat.
- Having a number of people in excess of the maximum number approved for the

boat on board, unless the boat's owner knowingly allowed the livery boat to leave the livery's premises with a number of people in excess of the approved maximum weight or number on board, or did not properly inform the user of the boat's approved maximum weight or number of people.

Proposed MCL 324.44520a

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The bill is necessary to protect the viability of Michigan's livery industry. Although it appears that no lawsuits have been brought against livery owners in recent years, owners reportedly have experienced liability insurance premium increases of up to 300%. These increases can create significant hardship for liveries, particularly smaller ones. Because of the liveries' importance to the tourism industry, their closing can have a significant impact on State and local economies.

The bill would limit the liability of livery operators appropriately by establishing protections similar to those afforded to ski lift and roller skating rink operators, certain equine professionals, and owners of land used for recreational purposes. Boating, unquestionably, involves inherent danger, as do other recreational activities. Thus, it would be reasonable to expect canoe and kayak renters to assume some responsibility and accept the associated risks. The bill would protect owners from liability related to factors outside of their control, such as weather conditions, wave motion, and renters' actions, while retaining liability for owners who did not comport with certain statutory and regulatory requirements.

Opposing Argument

To date, there is no evidence that the watercraft livery industry has been subjected to unwarranted lawsuits. Thus, shielding livery owners from civil liability would be unnecessary and ill-advised. Perhaps it would be appropriate to examine the reasons that insurance companies have raised premiums drastically despite the

absence of litigation involving livery operators.

Legislative Analyst: Julie Koval

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Stephanie Yu

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.