



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL ANALYSIS



Telephone: (517) 373-5383
Fax: (517) 373-1986

House Bill 4426 (Substitute S-1 as reported)
 House Bill 4427 (as reported without amendment)
 Sponsor: Representative Michael E. Nye
 House Committee: Judiciary and Civil Rights
 Senate Committee: Judiciary

Date Completed: 4-24-95

RATIONALE

Noncriminal violations of the Michigan Vehicle Code are classified as "civil infractions", for which the Code provides detailed procedures for the issuance of citations, challenges in court, appeals, and payment and distribution of fines. Michigan also has in place other statutes that describe various nonmotor offenses as "civil infractions" or "civil violations" subject to civil fines. These other statutes, however, do not specify procedures for the enforcement of civil infractions, adjudicating those violations, or levying fines and distributing revenue from fines. The use of noncriminal sanctions for relatively minor offenses continues to be of interest for a wide range of situations, as some recently enacted laws indicate. Recent acts establishing various nonmotor civil violations include Public Act 187 of 1990 (for certain violations of the Pupil Transportation Act), Public Act 320 of 1990 (for certain handgun safety violations), and Public Act 99 of 1994 (for failure to secure a snowmobile trail permit sticker). While some courts reportedly have levied fines provided for by law for civil infractions, there is no specific statutory procedure for them to do so, nor are there provisions in law for alleged violators to challenge civil infraction citations or appeal fines for them. Some people believe that State law should include a detailed procedure for the enforcement and adjudication of civil infraction violations and due process procedures for alleged violators.

CONTENT

House Bill 4426 (S-1) would amend the Revised Judicature Act (RJA) to establish procedures under which violations of State law could be adjudicated as State civil infractions. The bill

would define "state civil infraction" as "a civil infraction involving a violation of state law that is designated by statute as a state civil infraction". ("Civil infraction" means "an act or omission that is prohibited by a law and is not a crime under that law or that is prohibited by an ordinance and is not a crime under that ordinance, and for which civil sanctions may be ordered".) The bill also would do all of the following:

- Allow a district court to establish a State civil infraction bureau.
- Provide for the adjudication of State civil infractions other than those involving a traffic or parking violation.
- Impose driver's license sanctions for failure to appear in response to a citation issued for, or failure to comply with an order or judgment involving, a State civil infraction enforceable under the RJA.
- Provide for the imprisonment of a State civil infraction violator, on civil contempt charges, upon his or her defaulting on an order to pay civil fines or costs.
- Require that civil infraction fines for violation of a State statute be applied to support libraries.
- Specify that a State civil infraction would not be a lesser included offense of a criminal offense.

House Bill 4427 would amend the Michigan Vehicle Code to provide for the driver's license sanctions proposed by House Bill 4426. The bill also specifies that the Code's provisions for disposition and use of revenues from

license reinstatement fees would not apply to a reinstatement fee collected under House Bill 4426.

The bills are tie-barred and would take effect on January 1, 1996.

A more detailed description of House Bill 4426 (S-1) follows.

State Civil Infraction Bureau

The bill specifies that, upon the approval of the governing body of a district court's control unit, the district court could establish, within the court, a State civil infraction bureau. The bureau could use the district court's clerks or other personnel to accept, as authorized by the district court judges, admissions for State civil infractions enforceable under the RJA, and to collect civil fines and costs as prescribed by the district court judges. The chief or only judge of the district, subject to the Supreme Court's supervision, would have authority over the State civil infraction bureau personnel and would have to determine the location and number of State civil infraction bureau offices. A State civil infraction bureau could be combined with a traffic bureau.

Appeals by leave of the court could be taken from the State civil infraction bureau to the district court. Appeals would have to be taken within seven days after the entry of a civil infraction admission and would have to be heard de novo (i.e., anew).

Enforcement and Adjudication

Prosecutor. The RJA provides that, if a violation of law is a civil infraction, the prosecuting attorney or attorney for the political subdivision is required to appear in court only in those civil infraction actions that are contested before a judge of the district court in a formal hearing under the Michigan Vehicle Code. The bill would revise that requirement to include formal hearings under the RJA for both municipal civil infractions and State civil infractions, and to restrict the appearance of a prosecuting attorney to those actions contested before a judge of the district court in a formal hearing.

Magistrate. The RJA authorizes a district court magistrate to hear and preside over civil infraction admissions and admissions with explanation, and to conduct informal hearings pursuant to the Michigan Vehicle Code or the RJA's provisions pertaining to municipal civil infractions. The bill

would add State civil infractions to that authorization.

Citation. A State civil infraction action would be commenced upon the issuance of a citation, and the plaintiff would be the State. The district court and any municipal court would have exclusive jurisdiction over State civil infraction actions. The time specified in a citation for appearance would have to be within a reasonable time after the citation was issued. The place specified for appearance would have to be the district or municipal court that had territorial jurisdiction of the location in which the State civil infraction occurred. If the person cited were a minor, he or she could appear in court or admit responsibility for a State civil infraction without the appointment of a guardian or next friend. The district or municipal court would have jurisdiction over the minor and could proceed in the same manner and in all respects as if the minor were an adult.

Each citation would have to be numbered consecutively, be in a form approved by the State Court Administrator, and consist of the following parts:

- The original, which would be a complaint and notice to appear by the law enforcement officer and would have to be filed with the court.
- The first copy, which would have to be retained by the law enforcement agency.
- The second copy, which would have to be issued to the alleged violator, if the violation were a misdemeanor.
- The third copy, which would have to be issued to the alleged violator, if the violation were a State civil infraction.

With the State Court Administrator's prior approval, the citation could be modified as to content or number of copies to accommodate law enforcement and local court procedures and practices. Use of the citation for violations other than State civil infractions would be optional.

A complaint for a State civil infraction signed by a law enforcement officer would have to be treated as having been made under oath, if the complaint contained a specific statement of the officer's declaration that the statements in the citation were true to the best of his or her information, knowledge, and belief.

A law enforcement officer who witnessed a person violating State law, the violation of which was a State civil infraction, could stop that person, detain

him or her temporarily for the purpose of issuing a citation, and prepare and subscribe, as soon and as completely as possible, an original and three copies of a citation. An officer also could issue a citation to a person if, based upon personal investigation, the officer had reasonable cause to believe that the person was responsible for a State civil infraction in connection with an accident. In addition, an officer could issue a citation to a person if, based upon the officer's personal investigation of a complaint by someone who witnessed the person violating State law, the violation of which was a State civil infraction, the officer had reasonable cause to believe that the person was responsible for a State civil infraction and if the prosecuting attorney approved in writing the citation's issuance. A law enforcement officer personally would have to serve the third copy of the citation upon the alleged violator.

A citation issued under the bill would have to name the State as the plaintiff and contain the name and address of the defendant, the State civil infraction alleged, the place where the defendant would have to appear in court, the telephone number of the court, and the time at or by which the appearance would have to be made. The citation also would have to inform the defendant that he or she, at or by the time specified for appearance, could do one of the following:

- Admit responsibility for the State civil infraction in person, by representation, or by mail.
- Admit responsibility "with explanation" in person, by representation, or by mail.
- Deny responsibility for the State civil infraction either by appearing in person for an informal hearing before a judge or a district court magistrate, without the opportunity of being represented by an attorney, or by appearing in court for a formal hearing before a judge, with the opportunity of being represented by an attorney.

A citation would have to inform the defendant that if he or she desired to admit responsibility "with explanation", other than by mail, or to have an informal or formal hearing, the defendant would have to apply to the court in person, by mail, by telephone, or by representation within the time specified for appearance and obtain a scheduled date and time to appear for a hearing. In addition, a hearing date could be specified on the citation.

A citation would have to contain a notice in boldfaced type that failure to appear within the time specified in the citation, or the time scheduled for a hearing or appearance, would result in entry of a default judgment against the defendant on the State civil infraction and a refusal by the Secretary of State to issue or renew a driver's license for the defendant. Timely application to the court for a hearing, return of the citation with an admission of responsibility with explanation, or return of the citation with an admission of responsibility and with full payment of applicable civil fines and costs would constitute a timely appearance.

If a law enforcement officer issued a citation, the court could accept an admission with explanation or an admission or denial of responsibility without the necessity of a sworn complaint. If the defendant denied responsibility, further proceedings could not be held until a sworn complaint relating to the State civil infraction was filed with the court.

Response to a Citation. A person to whom a citation was issued under the bill would have to appear by or at the time specified in the citation. If the defendant wished to admit responsibility for the State civil infraction, he or she could do so by appearing in person, by representation, or by mail. If appearance were made by representation or by mail, the court could accept the admission with the same effect as though the defendant personally appeared in court. Upon accepting an admission, the court could order any of the sanctions permitted by the bill.

If a defendant wished to admit responsibility for a State civil infraction "with explanation", the defendant could appear by mail or could contact the court in person, by mail, by telephone, or by representation to obtain a scheduled hearing date and time to appear, at which time the defendant would have to appear in person or by representation. The court would have to accept the admission and could consider the defendant's explanation by way of mitigating any sanction that the court could order under the bill. If appearance were made by representation or mail, the court could accept the admission with the same effect as if the defendant personally appeared in court, but the court could require the defendant to provide a further explanation or to appear in court personally.

A defendant who wished to deny responsibility would have to do so by appearing for an informal

or formal hearing. If the hearing date were not specified on the citation, the defendant would have to contact the court in person, by representation, by mail, or by telephone, and obtain a scheduled date and time to appear. If the hearing date were specified on the citation, the defendant would have to appear on that date for an informal hearing unless the defendant contacted the court at least 10 days before the hearing date to request a formal hearing. The court would have to schedule an informal hearing, unless the defendant expressly requested a formal hearing. If the defendant expressly requested a formal hearing, the court would have to schedule a formal hearing. If an informal or formal hearing were scheduled by telephone, the court would have to mail the defendant a confirming notice of that hearing by regular mail to the address appearing on the citation or to an address that was furnished by the defendant.

Informal Hearing. An informal hearing would have to be conducted by a district court magistrate, if authorized by the judge or judges of the district court, or by a judge of the district or municipal court. A magistrate could administer oaths, examine witnesses, and make findings of fact and conclusions of law. The judge or magistrate would have to conduct the informal hearing in an informal manner "so as to do substantial justice according to the rules of substantive law", but would not be bound by the statutory provisions or rules of practice, procedure, pleading, or evidence, except provisions relating to privileged communications. There could not be a jury, and a verbatim record of an informal hearing would not be required.

At an informal hearing, the defendant could not be represented by an attorney and the plaintiff could not be represented by the prosecuting attorney. Notice of a scheduled informal hearing would have to be given to the plaintiff, and both the plaintiff and defendant could subpoena witnesses. Witness fees would not have to be paid in advance. Witness fees for a witness on behalf of the plaintiff would be payable by the district court's control unit.

If the judge or magistrate determined by a preponderance of the evidence that the defendant was responsible for a State civil infraction, the judge or magistrate would have to enter an order against the defendant. Otherwise, a judgment would have to be entered for the defendant, but the defendant would not be entitled to costs of the action.

The plaintiff or defendant could appeal an adverse judgment entered at an informal hearing. An appeal from a municipal judge would have to be a bench trial de novo in the circuit court. In other instances, an appeal would have to be de novo in the form of a scheduled formal hearing. An appeal from a judge of the district court would have to be heard by a different judge of the district; an appeal from a district court magistrate would have to be heard by a judge of the district.

Formal Hearing. A formal hearing could be conducted only by a judge of the district or municipal court. In a formal hearing, the defendant could be represented by an attorney, but would not be entitled to counsel appointed at public expense. Notice of a formal hearing would have to be given to the prosecuting attorney, who would have to appear in court for a formal hearing and would be responsible for the issuance of a subpoena to each witness for the plaintiff. The defendant also could subpoena witnesses. Witness fees would not have to be paid in advance. Witness fees on behalf of the plaintiff would be payable by the district court's control unit. There could not be a jury trial in a formal hearing.

If the judge determined by a preponderance of the evidence that the defendant was responsible for a State civil infraction, the judge would have to enter an order against the defendant. Otherwise, a judgment would have to be entered for the defendant, but the defendant would not be entitled to costs of the action.

Failure to Appear

If the defendant in a State civil infraction action failed to appear as directed by a citation or other notice, at a scheduled appearance, informal hearing, or formal hearing, the court would have to enter a default judgment against that defendant.

Unless the court granted an adjournment for good cause shown, the court would have to enter a judgment for the defendant if the law enforcement officer who issued a citation for a State civil infraction failed to appear at a scheduled informal hearing, or if the prosecuting attorney failed to appear at a scheduled formal hearing, but the defendant would not be entitled to costs of the action.

Sanctions

Fines and Costs. If a defendant were determined to be responsible or responsible "with explanation"

for a State civil infraction, the judge or district court magistrate could order the defendant to pay a civil fine, as provided by law, and costs, as provided in the bill. In the order of judgment, the judge or district court magistrate could grant a defendant permission to pay a civil fine and costs within a specified period of time or in specified installments. Otherwise, the civil fine and costs would be payable immediately.

If a defendant were ordered to pay a civil fine under the bill, the judge or magistrate would be required summarily to tax and determine the costs of the action, which would not be limited to the costs taxable in ordinary civil actions and could include all expenses, direct and indirect, to which the plaintiff had been put in connection with the State civil infraction, up to the entry of judgment. Costs of at least \$9 would have to be ordered, but costs could not be ordered in excess of \$500. Costs in the district court would have to be distributed as provided under the RJA. Costs in a municipal court would have to be paid to the county. A district court magistrate could impose sanctions permitted under the bill only to the extent expressly authorized by the chief or only judge of the district.

Each district of the district court and each municipal court could establish a schedule of civil fines and costs to be imposed for State civil infractions that occurred within the district or city. If a schedule were established, it would have to be prominently posted and readily available for public inspection. A schedule would not have to include all violations that were designated by law as State civil infractions.

A default in the payment of a civil fine or costs ordered under the bill, or an installment of the fine or costs, could be collected by a means authorized by the RJA for the enforcement of a judgment.

Driver's License Sanctions. Not less than 28 days after a defendant failed to appear in response to a citation issued for, or failed to comply with an order or judgment involving, a State civil infraction, the court would have to notify the defendant by ordinary mail that if he or she failed to appear or failed to comply within 14 days after the notice, the court would notify the Secretary of State of the defendant's failure. Upon receiving notice of that failure, the Secretary of State could not issue or renew a driver's license for the defendant, until both of the following occurred:

- The court informed the Secretary of State that the defendant had resolved all outstanding matters regarding each notice or citation.
- The defendant had paid to the court a \$25 driver license reinstatement fee. If the court determined that the defendant was not responsible for any violation for which the defendant's license was not issued or renewed, the court would have to waive the reinstatement fee.

Failure to Comply. A defendant who failed to comply with an order or judgment issued for a State civil infraction would be guilty of a misdemeanor.

Police Misconduct. A law enforcement officer who, knowing the statement to be false, made a materially false statement in a State civil infraction citation, would be guilty of perjury, a felony punishable by imprisonment for up to 15 years, and would be in contempt of court. An officer who issued a citation for a State civil infraction could not accept a fee for issuing the citation; an officer who did so would be guilty of misconduct in office and would be subject to removal from office.

Default

If a defendant defaulted in the payment of a civil fine or costs or of any installment, the court, upon its own or the plaintiff's motion, could require the defendant to show cause why the default should not be treated as in civil contempt. The court could issue a summons, an order to show cause, or a bench warrant of arrest for the defendant's appearance.

If a corporation or an association were ordered to pay a civil fine or costs, the individuals authorized to make disbursement would have to pay the fine or costs, and their failure to do so would constitute civil contempt unless they made the showing required by the bill.

Unless a defendant showed that the default was not attributable to an intentional refusal to obey the order of the court or to a failure on his or her part to make a good faith effort to obtain the funds required for payment, the court would have to find that the default constituted a civil contempt and could order the defendant committed until all or a specified part of the civil fine, costs, or both, was paid. If it appeared that the default in the payment

of a fine or costs did not constitute civil contempt, the court could enter an order allowing the defendant additional time for payment, reducing the amount of payment or of each installment, or revoking the fine or costs.

The term of imprisonment on civil contempt for nonpayment of a civil fine or costs would have to be specified in the order of commitment, and could not exceed one day for each \$30 of the fine and costs. A person committed for nonpayment of a civil fine or costs would have to be given credit toward payment of each day of imprisonment and each day of detention in default of recognizance before judgment at the rate of \$30 per day. A defendant could not be discharged from custody until one of the following occurred:

- The defendant was credited with the amount due, through the \$30 per day credit for imprisonment.
- The amount due was collected through execution of process or otherwise.
- The amount due was satisfied pursuant to a combination of collection and credit for imprisonment.

Upon discharge of the defendant, the civil contempt would have to be purged.

Public Libraries

A civil fine ordered under the bill for a violation of State statute would have to be exclusively applied to the support of public libraries and county law libraries in the same manner as provided by law for penal fines assessed and collected for violation of a Michigan penal law. The bill specifies that this requirement "is intended to maintain a source of revenue for public libraries which previously received penal fines for misdemeanor violation of state statute which are now designated state civil infractions".

MCL 600.113 et al. (H.B. 4426)
257.321a (H.B. 4427)

SENATE COMMITTEE ACTION

The Senate Judiciary Committee adopted a substitute (S-1) to House Bill 4426 that differs from the House-passed version of the bill in the following ways:

- The House-passed version excluded from the bill's procedures civil infractions that are

- a violation of the Marine Safety Act; the Senate substitute removed that exclusion.
- The substitute removed from the bill provisions that would have authorized a judge or magistrate to assess costs incurred in compelling a defendant's appearance in a State or municipal civil infraction action.
- The substitute specifies that appeals by leave of the court, rather than as of right, could be taken from a court's State civil infraction bureau to the district court.
- The House-passed version provided that a complaint for a State civil infraction signed by a law enforcement officer would have to be treated as having been made under oath if the alleged violation occurred in the officer's presence and if the complaint contained a specific statement that the statement's in the complaint were true to the officer's best information, knowledge, and belief. The substitute includes only the latter condition.
- The substitute specifies that an appeal from a municipal judge would have to be a *bench* trial de novo in the circuit court.
- The House-passed version would have required the court to enter a judgment for the defendant if the complaining law enforcement officer failed to appear at a scheduled informal hearing or if the prosecutor failed to appear at a scheduled formal hearing. The substitute, however, would allow the court to grant an adjournment for good cause shown.

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 bills would fill a gap in Michigan statute: the failure of State law to provide details on how nonmotor civil infractions are to be processed. The need to fill this gap apparently is growing, with the number of Public Acts, bills, and amendments that propose to make various minor offenses "civil infractions" or "civil violations". The bills sensibly would employ the basic procedures set forth in the Michigan Vehicle Code, essentially adopting those procedures, with minor modifications. The bills also are similar to recent legislation providing for the enforcement and adjudication of municipal civil infractions (Public Act 12 of 1994). The bills would explain how citations were to be issued; allow for

defendants' response to, and appeals regarding, citations; provide enforcement mechanisms; and specify distribution of fine revenue. The bills not only would ensure that appropriate procedures were followed, but also would promote consistency across the State and, thus, improve the administration of justice.

Opposing Argument

The bills propose to use driver's license sanctions as an enforcement mechanism for nondriving offenses, which would be problematic in several respects. Driver's license sanctions properly should be reserved for driving violations; to do otherwise would be illogical, and could dilute what force license sanctions hold for encouraging compliance with traffic laws. In addition, to use driver's license sanctions as an enforcement mechanism would be to create a system of unequal punishment, as people with driver's licenses would be subject to sanctions to which nondrivers would be immune. Finally, driver's license sanctions appear to be fairly ineffective at getting people to pay their traffic tickets or obey drunk driving laws. The number of people who drive without valid licenses can only be guessed at, but the Secretary of State reportedly has indicated that about one-third of drivers facing suspension due to moving violations simply opt to allow their licenses to be suspended rather than go to court.

Response: The sanctions would prevent a person from receiving a new driver's license regardless of whether he or she had previously held one, so the sanctions would apply to those who were unlicensed at the time of their offense as well as to licensed drivers. In addition, barring driver's license issuance or renewal for someone with outstanding fines for nonmotor civil infractions would offer an alternative to imposing contempt penalties for nonpayment of fines, which would involve bench warrants and jail time.

Opposing Argument

The bills may not be sufficient without additional legislation to amend the various statutes now providing for nonmotor civil infractions or civil violations to standardize usage and refer to "state civil infractions". In addition, there may be a need to amend the minor-in-possession provisions of the Michigan Liquor Control Act to clarify whether the bills' procedures were to prevail in those situations. According to that Act, a person less than 21 years of age who purchases, consumes in a licensed premises, or possesses alcohol is liable for a civil fine, but the Act does not specify whether the offense is a criminal violation or a civil

infraction. Public Act 447 of 1994 would specify that the offense is a civil infraction, but the 1994 Act failed to take effect because it was tie-barred to a bill that was pocket-vetoed when the Governor did not sign it at the end of the 1993-94 legislative session.

Legislative Analyst: P. Affholter

FISCAL IMPACT

For those district courts that chose to establish a State civil infraction bureau, there would be additional staff costs to run the bureau. Otherwise the legislation would be a clarification and codification of procedures that already are being done by the courts.

Fiscal Analyst: L. Nacionales-Tafoya
B. Baker

H9596\S4426A

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.