



**House
Legislative
Analysis
Section**

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STATE CIVIL INFRACTIONS

**House Bill 4426 as enrolled
Public Act 54 of 1995**

**House Bill 4427 as enrolled
Public Act 55 of 1995**

Second Analysis (8-9-95)

**Sponsor: Rep. Michael E. Nye
House Committee: Judiciary and Civil
Rights
Senate Committee: Judiciary**

THE APPARENT PROBLEM:

Civil infractions are a form of non-criminal sanction that first were enacted into Michigan statute by a package of legislation (Public Acts 510-517 of 1978) that decriminalized minor traffic offenses. The legislation, which amended the Michigan Vehicle Code (as well as the Revised Judicature Act, the Michigan Penal Code, the Code of Criminal Procedure, and four other traffic laws), implemented a system of traffic civil infractions that went into effect on August 1, 1979. The vehicle code provides detailed procedures for issuing traffic civil infraction citations ("tickets"), challenges in court, appeals, and payment and distribution of fines.

Since this traffic civil infraction system went into effect -- and particularly in the late 1980s and early 1990s -- other statutes have been put into place that designate a number of non-traffic offenses as "civil infractions" or "civil violations" subject to civil fines. Continued interest in the use of noncriminal sanctions for relatively minor offenses for a wide range of situations was further evident in the 1993-94 legislative session, when two major packages of legislation were enacted that created both a new system of civil infractions called "municipal civil infractions," and a subset of such civil infractions called "trailway municipal civil infractions." However, the laws implementing non-traffic civil infractions typically specify no procedures for determining who may start a case, how such infractions are to be processed, what kind of hearing is allowed or required, where the money from the civil fines is to go, or how citations are to be enforced.

Legislation that would detail procedures for non-traffic civil offenses was introduced in the 1991 legislative session as House Bill 5512 of 1992. Although the bill was never taken up by the House, two laws were amended in anticipation of this "civil procedures" act: Public Act 17 of 1991 amended the off-road vehicle act (former Public Act 319 of 1975, now repealed and reincorporated, by Public Act 58 of 1995, into the Natural Resources and Environmental Protection Act) to make several existing misdemeanor violations into civil violations when a "civil procedures act" was enacted [MCL 257.1624, now MCL 324.81147]. The former Department of Natural Resources enabling act (Public Act 17 of 1921, also now repealed and reincorporated into the NREPA) was amended by Public Act 92 of 1992 to provide that the current misdemeanor violations of rules or orders issued for the protection of lands and property would become civil infractions when a "civil procedures act" was enacted [MCL 299.3a, now MCL 324.504]. House Bills 4068 and 4069, which would have created and implemented a state civil infraction system, passed the House but died in the Senate.

Legislation has again been proposed that would implement a "civil procedures" act that would detail procedures for processing non-traffic civil infractions.

THE CONTENT OF THE BILLS:

The bills would specify procedures for issuing and processing "state civil infractions" (generally, noncriminal violations of state law that were not

House Bills 4426 and 4427 (8-9-95)

traffic violations or municipal civil infractions). House Bill 4426 would amend the Revised Judicature Act (MCL 600.8313 et al.) to establish procedures for state civil infractions that would parallel those already in place for traffic and parking civil infractions. Briefly, the bill would specify that the state was the plaintiff in state civil infraction cases; give the district court and municipal courts jurisdiction over state civil infractions; establish citations similar in form and notices to traffic citations; require that law enforcement officers serve citations upon alleged violators; allow alleged violators to admit responsibility, admit responsibility "with explanation," or deny responsibility for state civil infractions; require that a sworn complaint be filed with the court before a contested hearing could be held; allow a defendant who contested a citation to ask for an informal hearing (typically before a district court magistrate) or for a formal hearing before a judge (though no jury would be allowed); and allocate civil fines and costs in the same way as misdemeanor and traffic civil infractions, including the allocation of civil fines to libraries. The bill also would amend provisions on municipal civil infractions to allow the court, under certain circumstances, to require a defendant to pay the costs associated with compelling his or her appearance (similar authority exists with regard to traffic and parking civil infractions, and would be provided for state civil infractions).

House Bill 4427 would amend the Michigan Vehicle Code (MCL 257.321a) to bar the issuing or renewal of a driver's license if someone had an outstanding judgment for a state civil infraction.

Both bills would take effect January 1, 1996, providing both were enacted. A more detailed explanation of the bills follows.

House Bill 4426

Definitions. The Revised Judicature Act currently defines a "civil infraction" to mean "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 for which civil sanctions may be ordered." "Civil infraction" includes, but isn't limited to, (a) various specified traffic and parking violations and (b) municipal civil infractions. (See Background Information.) The bill would amend this definition to include "state civil infractions" under the definition of "civil infraction," and would

define the former to mean "a civil infraction involving a violation of state law that [was] designated by statute as a state civil infraction."

State civil infraction bureau. With the approval of the local funding unit, the district court could establish a state civil infraction bureau using court personnel to accept admissions of state civil infractions and to collect civil fines and costs. A state civil infraction bureau could be combined with a traffic bureau. A person would have the right to appeal from the state civil infraction bureau to the district court.

State civil infraction actions. A state civil infraction action would be commenced upon issuance of a citation. The plaintiff in a state civil infraction action would be the state. The district court and any municipal court would have jurisdiction over state civil infraction actions. A state civil infraction could not be a lesser included offense of a criminal offense.

Minors. A minor would be permitted to appear in court or to admit responsibility for a state civil infraction without the necessity for appointment of a guardian or next friend. The court could proceed in all respects as if the minor were an adult.

Issuing citations. A law enforcement officer who witnessed a person committing a state civil infraction could stop the person, detain the person temporarily for the purpose of issuing a citation, and complete an original and three copies of a citation. The bill states that an officer could issue a citation if personal investigation gave the officer reasonable cause to believe that the person was responsible for a state civil infraction in connection with an accident. If the prosecuting attorney gave written approval, an officer could issue a citation to a person for reasonable cause based on personal investigation by the officer of a complaint by someone who witnessed the person committing a state civil infraction. A complaint for a state civil infraction signed by a law enforcement officer would be treated as made under oath if the officer signed an affirmation in the complaint.

A law enforcement officer who accepted a fee for issuing a citation would be guilty of misconduct in office and would be subject to removal from office.

Citation form. Each citation would be in a form approved by the state court administrator,

numbered consecutively, and generally consist of an original and three copies. The original would be filed with the court, the first copy would be retained by the law enforcement agency, the second copy would be issued to the alleged violator if the violation was a misdemeanor, and the third copy would be issued to the alleged violator if the violation was a state civil infraction.

The citation would contain, among other things, the telephone number of the court, the time at or by which the person would have to appear, and an explanation that the defendant could do one of the following at or by the time specified for appearance: 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; or, deny responsibility by appearing in court for an informal or formal hearing. The citation would note that to admit responsibility "with explanation" in person or to have an informal or formal hearing, the defendant would have to apply to the court for a hearing date; a hearing date could be specified on the citation.

The citation would contain a notice in boldfaced type that failure to appear as required would lead to a default judgment against the defendant and the refusal by the secretary of state to issue or renew a driver's license. The requirement for timely appearance would be met by timely application for a hearing, return of the citation with an admission of responsibility with explanation, or return with an admission of responsibility and full payment of applicable fines and costs.

Uncontested citations. A defendant could admit responsibility in person, by representation, or by mail, and the court could order the defendant to pay applicable fines and costs. If a defendant admitted responsibility "with explanation", whether by mail or in person, the court would accept the admission and could impose lower fines and costs in consideration of the defendant's explanation. If an explanation was offered by representation or by mail, the court could require the defendant to provide further explanation or appear in court.

Contested citations. If a defendant wished to deny responsibility for a state civil infraction, he or she could do so by appearing for a formal or informal hearing. If the hearing date was not specified on the citation, the defendant would have to contact the court to obtain a hearing date. Unless the

defendant expressly requested a formal hearing, the hearing would be informal.

Informal hearings. An informal hearing could be conducted by a municipal court or district court judge or by a magistrate authorized by the judge or judges of the district; a magistrate could administer oaths, examine witnesses, and make findings of fact and conclusions of law at an informal hearing. An informal hearing would be conducted so as to do substantial justice according to the rules of substantive law, but would not necessarily be conducted according to statutory provisions or rules of practice, procedure, pleading, or evidence, except provisions relating to privileged communications. There would be no jury, and no verbatim record would be required. The defendant could not be represented by an attorney, and the plaintiff could not be represented by the prosecuting attorney. The defendant and plaintiff could subpoena witnesses. If the judge or magistrate determined by a preponderance of the evidence that the defendant was responsible for a state civil infraction, he or she would order the defendant to pay a fine and costs. Otherwise, a judgment would 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. An appeal from a municipal judge would be a bench trial de novo in the circuit court. An appeal from a decision of a district judge would be a formal hearing by a different judge of the district. An appeal from a district court magistrate would be a formal hearing by a judge of the district.

Formal hearings. A formal hearing would be conducted only by a municipal court or district court judge. The defendant could be represented by an attorney, but would not be entitled to counsel appointed at public expense. The prosecutor would appear in court, and would be responsible for subpoenaing each witness for the plaintiff. The defendant also could subpoena witnesses. As with informal hearings, there would be no jury trial. If the judge determined by a preponderance of the evidence that the defendant was responsible for a state civil infraction, he or she could order the defendant to pay a fine and costs. Otherwise, a judgment would be entered for the defendant, but the defendant would not be entitled to costs of the action.

Failure to appear. If the defendant failed to appear as directed by the citation or at a scheduled appearance or hearing, the court would enter a default judgment against the defendant. Unless the court had granted an adjournment for good cause shown, it would enter a judgement for the defendant if the citing officer failed to appear at a scheduled informal hearing, or if the prosecutor failed to appear or was unable to proceed at a scheduled formal hearing. The defendant would not be entitled to costs.

Fines and costs. Each district of the district court and each municipal court could establish a schedule of fines and costs to be imposed for state civil infractions that occur within the district or city. Any such schedule would be prominently posted and readily available for public inspection. A schedule would not have to include all violations that are designated by law as state civil infractions. Costs ordered by a court could include all expenses, direct and indirect, to which the defendant had been put in connection with the state civil infraction; however, any costs ordered would have to be between \$9 and \$500. Generally, any fine or costs would be payable immediately upon entry of a judgment; however, a judge or magistrate could extend the payment period or authorize installment payments. A magistrate could order fines and costs only to the extent expressly authorized by the chief or only judge of the district. Costs in an action in district court would be distributed as otherwise provided by the Revised Judicature Act. Costs in an action in a municipal court would be paid to the county.

In addition, the judge or district court magistrate could assess additional costs incurred in compelling the appearance of a defendant who was found responsible for a civil infraction. These costs would go into the general fund of the unit of government assessing the costs.

Civil contempt. If a defendant defaulted on payment, the court could require the defendant to show cause why the default should not be treated as civil contempt; the court could issue a summons, an order to show cause, or a bench warrant of arrest for the defendant's appearance. In the case of a corporation or association, individuals authorized to make the disbursement would be subject to civil contempt for failure to pay the fine or costs. Unless the defendant was able to show that the default was not attributable to an intentional refusal

to obey the court or to a failure to make a good faith effort to obtain the funds required for payment, the court would find that the default constituted civil contempt. Upon finding civil contempt, the court could order the defendant committed until all or a specified part of the civil fine, costs, or both was paid; however, the period of incarceration could not exceed one day for each \$30 of fine and costs.

Libraries. Civil fines would be exclusively applied to the support of public libraries and county law libraries in the same manner as is provided by law for criminal fines imposed for violation of a penal law. This provision would be expressly intended to maintain a source of revenue for public libraries that previously received fines for misdemeanors that are now designated as civil infractions.

Criminal penalties. A law enforcement officer who knowingly made a materially false statement in a citation would be guilty of perjury, punishable by imprisonment for up to 15 years; he or she would in addition be in contempt of court. A defendant who failed to comply with an order or judgment issued under the bill would be guilty of a misdemeanor.

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Nonrenewal of license. If a defendant failed to answer a citation or notice to appear in court, or failed to comply with a court order or judgment issued under the bill, the court would notify the secretary of state of that failure. Thereafter, the secretary of state would not renew or issue an operator's or chauffeur's license for that person until informed by the court that he or she had resolved all matters relating to the violation or noncompliance, and that he or she had paid the court a \$25 license reinstatement fee.

BACKGROUND INFORMATION:

Overview of civil penalties in Michigan law. There are, currently, three main categories of civil offenses in Michigan statute: (1) so-called traffic or motor civil infractions, added to Michigan law in 1979; (2) various miscellaneous civil infractions or civil violations, generally added since 1988; and (3) municipal civil infractions, including a subset of municipal civil infractions called "railway municipal civil infractions," that were added in 1994 in two separate packages of legislation. (Michigan law refers both to "civil infractions" and to "civil

violations." The former was first defined in statute in 1978; the latter wasn't defined in statute until 1993. See below.)

A fourth category of civil infractions, "marine law civil infractions," had been proposed in a set of bills (House Bills 4639 through 4641) that passed the House last session. The bills were reintroduced again this session as House Bills 4505 through 4507, but were reported from the House Committee on Judiciary and Civil Rights in substitutes that deleted reference to "marine law civil infractions" and instead substituted language that would make certain boating offenses "state civil infractions."

Finally, prior to 1995, two Michigan laws provided for civil fines without mentioning either civil infractions or civil violations. The Soil Erosion and Sedimentation Control Act (Public Act 297 of 1937 as amended by Public Act 131 of 1988) and the "underage drinking" section (MCL 436.33b) of the Liquor Control Act (Public Act 8 of the Extra Session of 1933). However, the Liquor Control Act was amended twice in the past two years: first in 1994, to make underage drinking a civil infraction, and again in 1995 to make underage drinking a misdemeanor. Public Act 447 of 1994 (enrolled Senate Bill 482) would have made underage drinking a civil infraction, but the law never took effect because Senate Bill 482 was tie-barred to House Bill 4323, which was "pocket vetoed" by the governor. Public Act 122 of 1995 (enrolled House Bill 4136), which takes effect on September 1, 1995, makes underage drinking a misdemeanor. (House Bill 4136 as passed by the House would have made underage drinking a civil infraction, but the enrolled version of the bill changed this to a misdemeanor.)

Civil infractions. The 1978 package of legislation (Public Acts 510-517) that created the traffic civil infraction system added the same definition of "civil infraction" to both the Michigan Vehicle Code and the Revised Judicature Act (RJA). The vehicle code definition, which has not changed since being added by Public Act 510 of 1978, defines "civil infraction" [MCL 257.6a] to mean "an act or omission prohibited by law which is not a crime as defined in [the penal code], and for which civil sanctions may be ordered." (The Michigan Penal Code, as amended by Public Act 513 of 1978, defines "crime" [MCL 750.5] to mean "an act or omission forbidden by law which is not designated as a civil infraction, and which is punishable upon conviction by any [one] of the following: (a)

imprisonment, (b) fine not designated a civil fine, (c) removal from office, (d) disqualification to hold an office of trust, honor, or profit under the state, (e) other penal discipline.")

The definition of "civil infraction" in the Revised Judicature Act (as added by Public Act 511 of 1978) originally was identical to that in the vehicle code. However, it was changed in 1994 by legislation that created a municipal civil infraction system (Public Acts 12-26). The RJA definition now says that a "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" [MCL 600.113]. The definition specifies that "civil infraction" includes, but is not limited to, (1) municipal civil infractions and (2) various traffic and parking violations, including (a) violations of the Michigan Vehicle Code or of local ordinances that substantially correspond to vehicle code provisions and that are designated as civil infractions; (b) violations of ordinances adopted under the state law governing the control of traffic in parking areas, such as shopping centers (Public Act 62 of 1956); (c) violations of traffic ordinances at state universities and colleges if the ordinance designates the violation a civil infraction; and (d) violations of county parking lot regulations. (The RJA definition of "civil infraction" also includes a reference to violations of the Marine Safety Act, which was repealed by, and reincorporated into, the Natural Resources and Environmental Protection Act, Public Act 451 of 1994.)

Civil violations. In addition to defining "civil infraction," the Revised Judicature Act also defines "civil violation." The definition was added by Public Act 317 of 1993, which authorized late payment penalties for money owed to courts. A "civil violation" means "a violation of a law of this state or a local ordinance, other than a criminal offense or a violation that is defined or designated as a civil infraction, that is punishable by a civil fine or forfeiture under the applicable law or ordinance" [MCL 600.4801(d)].

Five state laws were amended between 1989 and 1992 to add references to "civil violations"; one law (the athletic services providers act) was enacted in 1990 that provides for a civil violation; and the Natural Resources and Environmental Protection Act (NREPA), as amended by Public Act 58 of

1995 (enrolled House Bill 4349), incorporates a civil violation contained in the former off-road vehicle act (Public Act 319 of 1975, as amended by Public Act 17 of 1991). The laws are as follows:

1. The firearms registration act (Public Act 372 of 1927): Public Act 320 of 1990 made it a civil violation either (a) to present a pistol for a required safety inspection when the pistol is loaded, not encased, or without a trigger lock or other disabling device, or (b) to fail to report the theft of a firearm [MCL 28.429 and MCL 28.430].

2. The State Construction Code Act (Public Act 230 of 1972): Public Act 135 of 1989 made it a civil violation to perform work on a residential building or structure without being licensed [MCL 125.1523a]. The act was amended again in 1994 -- by Public Act 22, enrolled Senate Bill 742 -- to add references to "municipal civil infractions."

3. The Michigan Campaign Finance Act (Public Act 388 of 1976): Public Act 95 of 1989 authorized the secretary of state to commence an administrative hearing to determine whether a civil violation of the act has occurred [MCL 169.215].

4. The athletic services providers act (Public Act 31 of 1990) makes it a civil violation to violate the act [MCL 333.26303].

5. The Electrical Administrative Act (Public Act 217 of 1956): Public Act 246 of 1991 made it a civil violation to perform regulated activities without a license or registration [MCL 338.890].

6. The Local Historic Districts Act (Public Act 169 of 1970): Public Act 96 of 1992 made violations of the act civil violations.

7. The Natural Resources and Environmental Protections Act (Public Act 451 of 1994, as amended by Public Act 58 of 1995) continues to make it a civil violation to fail to get a certificate of title when buying or transferring an off-road vehicle.

Traffic civil infractions. Even though the Michigan Vehicle Code defines and refers only to "civil infractions," vehicle code civil violations often are referred to as "traffic (or "motor" or "vehicular") civil infractions" in contrast to the civil infractions or violations that have been added to other laws since 1979. When the vehicle code was amended in 1978, four other laws governing traffic and parking (for

example, in shopping centers and on college and university campuses) also were amended to allow civil infractions. They are as follows:

1. The Uniform Traffic Code (Public Act 62 of 1956, as amended by Public Act 514 of 1978 [MCL 257.951]).

2. The university traffic and parking act (Public Act 291 of 1967, as amended by Public Act 515 of 1978 [MCL 390.891, 392a, and 390.893]).

3. The control of traffic in parking areas ("shopping center traffic control") act (Public Act 235 of 1969, as amended by Public Act 516 of 1978 [MCL 257.943]).

4. The county parking lots act (Public Act 58 of 1945, as amended by Public Act 517 of 1978 [MCL 46.201]).

Finally, the newly enacted Natural Resources and Environmental Protection Act (Public Act 451 of 1994, as amended by Public Act 58 [enrolled House Bill 4349] of 1995) -- which incorporates various repealed statutes, including those that formerly governed the use of various recreational vehicles -- also incorporates several civil infractions or civil violations that formerly had been included under separate acts regulating recreational vehicles. The references, both in the former acts and in the current NREPA, are as follows:

1. The former Marine Safety Act (Public Act 303 of 1967) was amended by Public Act 301 of 1992 [MCL 281.1175, now MCL 324.80180] to make it a civil infraction to refuse to take a preliminary breath test.

2. The former off-road vehicle act (Public Act 319 of 1975) was amended by Public Acts 241 of 1989 and 17 of 1991 [MCL 257.1604b and 257.1620h, now MCL 324.81109 and 324.81141] to include a civil violation and a civil infraction.

3. The former snowmobile act (Public Act 74 of 1978) was amended by Public Act 99 of 1994 [MCL 257.1510, now MCL 324.82118] to make it a civil infraction for out-of-state snowmobilers to fail to get a Michigan snowmobile trail permit sticker.

Municipal civil infractions. Public Acts 12-26 of 1994 allow local units of government to create municipal civil violations bureaus and to bring civil,

rather than criminal, actions against people who violate local ordinances.

Public Act 12 of 1994 amended the Revised Judicature Act to define "municipal civil infraction" and to establish procedures for enforcing and processing such civil infractions. "Municipal civil infraction" is defined as "a civil infraction involving a violation of an ordinance." Municipal civil infractions include, but are not limited to, trailway municipal civil infractions and explicitly do not include certain crimes, including crimes punishable by imprisonment for more than 90 days and crimes generally involving drugs or drunk driving (including the operation of motor vehicles, boats, snowmobiles, off-road vehicles, and train engines).

Of the other laws in this package of legislation, Public Acts 13-21 amended the enabling acts for cities, villages, townships, and counties to allow these local units of government to enact or adopt ordinances whose violations would be municipal civil infractions; Public Act 22 amended the State Construction Code to allow local units of government who are responsible for administering the act to adopt ordinances making violations of the act or the state construction code municipal civil infractions; Public Acts 23 through 25 amended zoning enabling laws for counties, townships, cities, and villages to make violations of local zoning ordinances municipal civil infractions; and Public Act 26 amended the noxious weed act to allow county boards of commissioners to adopt noxious weeds ordinances and to allow townships, cities, and villages to make refusal to destroy noxious weeds a municipal civil infraction.

Trailway municipal civil infractions In 1993, the legislature enacted a package of legislation (Public Acts 26-28) that authorized a statewide recreational trailways system. In response to concerns that the Natural Resources Commission might allow motorized vehicles on recreational trailways, which may run through private as well as public property, another package of legislation (Public Acts 82-90) was enacted in 1994 that allows local units of government that do not favor allowing motor vehicles to be used on trailways within their jurisdiction to make this activity a "trailway" municipal infraction punishable by a fine of up to \$500. (Note: Public Act 58 of 1995, which amended the Natural Resources and Environmental Protection Act [Public Act 451 of 1994], repealed Public Act 27 of 1993, the Michigan Trailways Act,

[MCL 299.131-299.144] and reincorporated it into the NREPA as Part 721, MCL 324. 72101-324.72112.)

Public Acts 82-90 of 1994 amended the enabling acts of local units of government to say that the operation of a vehicle on a recreational trailway in violation of a local ordinance would be a "municipal civil infraction," whether or not the ordinance said so.

Thus, in the 1993-1994 legislative session most of the local government enabling laws were amended at least twice, once to add "municipal civil infractions" and again to add "trailway municipal civil infractions." Each of the 1994 packages of legislation also separately amended other laws in addition to those amended by both.

The following acts were amended by both the 1994 municipal civil infractions legislative package and by the 1993 trailway municipal civil infraction legislative package:

1. The Charter Township Act (Public Act 359 of 1961) was amended by Public Act 13 of 1994 to add "municipal civil infractions" [MCL 42.20 and 42.21] and by Public Act 82 of 1993 to add "trailway municipal infractions" [MCL 42.21c].
2. The township board enabling act (Public Act 246 of 1945) was amended by Public Act 14 of 1994 to add "municipal civil infractions" [MCL 41.24 et al.] and by Public Act 90 of 1993 to add "trailway municipal infractions" [MCL 41.183a].
3. The Home Rule Village Act (Public Act 278 of 1909) was amended by Public Act 15 of 1994 to add "municipal civil infractions" [MCL 78.24] and by Public Act 86 of 1993 to add "trailway municipal infractions" [MCL 78.24].
4. The General Law Village Act (Public Act 3 of 1895) was amended by Public Act 16 of 1994 to add "municipal civil infractions" [MCL 61.1a et al.] and by Public Act 87 of 1993 to add "trailway municipal civil infractions" [MCL 66.2a and 78.25b].
5. The Home Rule Cities Act (Public Act 279 of 1909) was amended by Public Act 17 of 1994 to add "municipal civil infractions" [MCL 117.1a et al.] and by Public Act 89 of 1993 to add "trailway municipal infractions" [MCL 117.1a and 117.4m].

6. The Fourth Class City Act (Public Act 215 of 1895) was amended by Public Act 19 of 1994 to add "municipal civil infractions" [MCL 81.1a et al.] and by Public Act 83 of 1993 to add "trailway municipal civil infractions" [MCL 81.1a and 89.2].

7. The county boards of commissioners enabling act (Public Act 90 of 1913) was amended by Public Act 18 of 1994 to add "municipal civil infractions" [MCL 46.11 et al.] and by Public Act 85 of 1993 to add "trailway municipal civil infractions" [MCL 123.68].

In addition to amending the above seven laws, eight additional acts were amended in 1994 to add "municipal civil infractions" and two additional acts were amended in 1993 to add "trailway municipal civil infractions." The following acts were amended by the municipal civil infractions legislative package only:

1. The Revised Judicature Act was amended by Public Act 12 of 1994 [MCL 600.113 et al.].
2. The charter county act was amended by Public Act 20 of 1994 [MCL 45.15a].
3. The optional unified form of county government act was amended by Public Act 21 of 1994 [MCL 45.556a].
4. The State Construction Code Act was amended by Public Act 22 of 1994 [MCL 125.1509 et al.].
5. The County Rural Zoning Enabling Act was amended by Public Act 23 of 1994 [MCL 125.224].
6. The Township Rural Zoning Act was amended by Public Act 24 of 1994 [MCL 125.294].
7. The city and village zoning enabling act was amended by Public Act 25 of 1994 [MCL 125.587].
8. The noxious weeds act was amended by Public Act 26 of 1994 [MCL 247.64 and 247.70].

The following two acts also were amended in 1993 to add trailway municipal infractions:

1. The county and regional parks enabling act was amended by Public Act 84 of 1993 [MCL 46.364].
2. The township parks enabling act was amended by Public Act 88 of 1993 [MCL 41.422].

Other civil infractions. In addition to the traffic and parking civil infractions in the vehicle code (and related acts) and the recently created municipal (including trailway) civil infractions, Michigan law has a number of other statutory civil infractions.

1. The Michigan State Police enabling act allows motor carrier enforcement officers to make warrantless arrests of people who commit civil infractions in violation of certain sections of the Michigan Vehicle Code (including sections on vehicle size, weight, and load restrictions) [MCL 28.6d].
2. The veterans' peddler's license act makes violations of the act's disclosure requirements civil infractions [MCL 35.442(5)].
3. Chapter 16 (Of the Powers and Duties of Townships, the Election and Duties of Township Officers, and the Division of Townships) of the Revised Statutes of 1846 was amended by PA 8 of 1983 to allow township constables or police officers the same right as the county sheriff to pursue, arrest, and detain certain people outside the township, including those who commit "a civil infraction violation under the Michigan Vehicle Code" within the township [MCL 41.83a].
4. The Pupil Transportation Act makes violations misdemeanors unless otherwise declared by it (or other laws) [MCL 257.1873], and lists two civil infractions: failure of school buses to stop at railroad crossings [MCL 257.1857] and transporting unauthorized people on school buses [MCL 257.1859].
5. The Revised Judicature Act, in addition to defining "civil infraction," also was amended by Public Act 255 of 1992 [MCL 600.586] to make it a civil infraction for sheriffs, deputy sheriffs, and county medical examiners licensed to practice law in Michigan either to serve process in an action in which they acted as attorney or counsel for someone, or to appear in court as attorney or counsel for a criminal defendant, except in a criminal or civil contempt proceeding.
6. Chapter 171 (Of County Jails and the Regulation Thereof) of the Revised Statutes of 1846 was amended by Public Act 402 of 1988 to make it a civil infraction for a sheriff to derive financial benefit or gain from providing food to prisoners in jail [MCL 801.10].

7. In addition to the civil violations and infractions with respect to recreational vehicles (see above), the Natural Resources and Environmental Protection Act (Public Act 451 of 1994), which repealed and reincorporated the Pesticide Control Act (former Public Act 171 of 1976) also makes it a civil infraction to violate a local pesticide ordinance [former MCL 286.571a, now MCL 324.8328].

FISCAL IMPLICATIONS:

The House Fiscal Agency (HFA) reports that although House Bill 4426 would create new revenue sources, it also would generate accompanying expenses. Components that cannot be quantified at this time include: the number of violations and resulting workload; costs associated with forms, administration, and the appeal process; whether certain administrative costs would be covered by new revenues; and, whether fines collected would cover court costs. House Bill 4426 is expected to increase state and local revenues and costs by indeterminate amounts. (8-9-95)

With regard to House Bill 4427, the HFA noted that the bill would increase state costs in an amount dependant on any ensuing workload increases, and that it would have no local fiscal impact. (8-9-95)

ARGUMENTS:

For:

The bills would fill a gap in Michigan statute: the failure to explicitly provide details on how civil infractions, other than traffic or municipal civil infractions, are to be processed. The need to fill this gap 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 vehicle code, essentially adopting vehicle code procedures, with minor modifications. The bills would explain how citations are to be issued, allow for defendant 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: they also would promote consistency across the state and thus improve the administration of justice.

Against:

The bills propose to use driver's license sanctions as an enforcement mechanism for non-driving offenses, which would be problematic in several respects. For one thing, many believe that 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; 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 numbers of people who drive without valid licenses can only be guessed at, but the secretary of state has reported that about one-third of drivers facing suspensions due to moving violations simply opt to allow their licenses to be suspended rather than go to court.

Response:

The proposal to bar driver's license renewal for someone with outstanding fines for nonmotor civil infractions may not be without flaws, but it at least offers an alternative to imposing contempt penalties, which means bench warrants and jail time, for nonpayment of fines.

Against:

There may be a need for additional legislation to amend the various statutes now providing for civil infractions or civil violations -- other than traffic or municipal civil infractions -- to standardize usage and refer to "state civil infractions."

Response:

Some legislation already has been acted upon that would begin the process of amending existing law in light of the bills. For example, House Bills 4505 through 4507, which recently were reported from the House Committee on Judiciary and Civil Rights, would define certain boating violations of the Natural Resources and Environmental Protection Act as state civil infractions and specify procedures parallel to those in the bills on how such infractions would be processed. And the recently amended Liquor Control Act provisions, which change the former penalty for underage drinking from civil fines to a misdemeanor offense, added a "state civil infraction" for refusal to take a preliminary breath test. No doubt this process will continue in the future.