



**House  
Legislative  
Analysis  
Section**

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**STATE CIVIL INFRACTIONS:  
CLEANUP**

**House Bills 5541 and 5552 as introduced  
Sponsor: Rep. Alan Cropsey**

**House Bill 5542 as introduced  
Sponsor: Rep. Eric Bush**

**House Bill 5543 with committee  
amendments  
Sponsor: Rep. Jessie Dalman**

**House Bill 5544 with committee  
amendments**

**House Bill 5546 as introduced  
Sponsor: Rep. Michael Nye**

**House Bill 5545 with committee  
amendments  
Sponsor: Rep. Candice Curtis**

**House Bill 5547 (Substitute H-1)  
Sponsor: Rep. Roland Jersevic**

**House Bill 5548 (Substitute H-1)  
Sponsor: Rep. Rep. Allen Lowe**

**House Bill 5549 (Substitute H-1)  
Sponsor: Rep. Frank M. Fitzgerald**

**House Bill 5550 as introduced  
Sponsor: Rep. James Ryan**

**House Bill 5551 as introduced  
Sponsor: Rep. David Galloway**

**First Analysis (2-8-96)  
Committee: Judiciary and Civil Rights**

House Bills 5541-5552 (2-8-96)

***THE APPARENT PROBLEM:***

Civil infractions are a form of non-criminal sanctions for relatively minor offenses that first were enacted into Michigan law by a package of legislation (Public Acts 510-517 of 1978) that decriminalized various minor traffic and parking offenses that until then had been classified as misdemeanors. This notion of decriminalizing relatively minor offenses then was applied to various other areas of law, so that over the years civil infractions came to be referred to as either "motor" (or "traffic") or "nonmotor" civil infractions, depending on whether or not they dealt with minor traffic offenses. A third major category of civil infractions was created by Public Acts 12-26 of 1994, which allows local units of government to designate certain ordinance violations as "municipal civil infractions," and to bring civil rather than criminal actions against people who are responsible for such violations. (Another package of legislation in that same legislative session, Public Acts 82-90 of 1994, allows local units of government to create a specific kind of

municipal civil infraction -- "trailway municipal civil infractions" -- that applies to the locally prohibited use of motorized vehicles on recreational trailways within local jurisdictions.) Although there are statutory procedures in place for processing motor and municipal civil infractions, no such procedures existed for the other miscellaneous civil infractions in various laws until 1995, when Public Act 54 (enrolled House Bill 4426) was enacted. (See enrolled analysis of House Bill 4426, dated 8-9-95.) Public Act 54 of 1995 amended the Revised Judicature Act to define a new class of civil infractions, "state civil infractions," and to specify procedures for processing them. However, a number of Michigan laws refer to "civil infractions" (or their close cousins, "civil violations") that are neither traffic civil infractions nor municipal infractions, some laws refer to fines or civil fines without mentioning civil infractions, and some laws were amended in anticipation of the enactment of a "civil procedures act." Legislation has been introduced that would bring

a number of laws into conformity with Public Act 54 of 1995, as well as correcting various other technical problems with related laws.

### ***THE CONTENT OF THE BILLS:***

With two exceptions (House Bills 5543 and 5545), the bills generally would change specific minor violations that now are labeled "civil infractions" or "civil violations" to "state civil infractions." House Bill 5543 would place certain Pupil Transportation Act civil infractions under traffic civil infraction procedures, while House Bill 5545 would make certain Natural Resources and Environmental Protection Act pesticide violations "municipal civil infractions." Several of the bills also would make other, mostly technical changes. A more detailed description of each bill follows.

Under the firearm registration act (Public Act 372 of 1927), a person is responsible for a "civil violation" and can be fined up to \$50 for presenting a loaded pistol, or a pistol without a trigger lock, for a safety inspection. House Bill 5541 would amend the act (MCL 28.429) to change "civil violation" to "state civil infraction" and specify that the fine was a "civil fine." (Note: Another section of the act, MCL 28.430, makes it a "civil violation" with a maximum fine of \$500 to fail to report the theft of a firearm as required by the act.)

The veteran's peddler's licensing act (Public Act 359 of 1921) currently makes it a "civil infraction," with a maximum civil fine of \$1,000, for someone licensed under the act to do any of the following: (a) fail to display a sign with his or her name, license number, and a statement to the effect that the profits from the sale are for his or her personal benefit; (b) fail to attach a similar statement to the sales goods; and (c) make a false representation that proceeds from the sale benefit a veteran's organization. House Bill 5542 would amend the act (MCL 35.442) to change "civil infraction" to "state civil infraction," and to delete the requirement that county prosecutors bring a civil action against anyone who violates the act.

The Pupil Transportation Act (Public Act 187 of 1990) makes it a "civil infraction" for school bus drivers (a) to fail to stop, as required by the act, before crossing a railroad track, and (b) to carry people on school buses other than those authorized by the act (i.e., pupils, certain pre-school children, and teachers or chaperons). House Bill 5543 would amend the act (MCL 257.1857 and 257.1859) to specify that civil infractions would be processed like traffic civil infractions and to add maximum civil fines of \$100.

House Bills 5544-5549 would amend various sections of the Natural Resources and Environmental Protection Act (Public Act 451 of 1994), including substituting Michigan Vehicle Code language describing blood alcohol content for current "percentage by weight of alcohol" language in sections of the act regulating boaters, off-road vehicles, and snowmobiles.

\* The NREPA makes violations of Department of Natural Resources (DNR) rules or orders for "the protection of lands and property under its control against wrongful use or occupancy" misdemeanors (punishable by imprisonment for up to 90 days or community service for up to 30 days, or a maximum fine of \$500) until "the civil procedures act is enacted into law, at which time these violations are to become civil infractions with civil fines of up to \$500. House Bill 5544 (MCL 324.504) would delete the misdemeanor language, and change the reference from "civil infraction" to "state civil infractions." The bill also would separate civil infraction and misdemeanor violations (and correct Michigan Vehicle Code references to impaired driving, commercial .04 blood alcohol content [BAC], and ORVs) in a section of the act that currently allows park and recreation enforcement officers to make warrantless arrests of people under certain circumstances.

\* Violations of local pesticide ordinances consistent with the NREPA are "civil infractions" with maximum fines of \$500. House Bill 5545 (MCL 324.8328) would change these "civil infraction" to "municipal civil infractions" with "civil fines" of up to \$500.

\* The failure to implement and maintain soil erosion and sedimentation control measures as required by the act is subject to a "civil fine" of not more than \$500. House Bill 5546 (MCL 324.9121) would make this violation of soil erosion prevention provisions a "state civil infraction" with the same civil fine. The bill also would delete both (a) the requirement that soil erosion violation fines be paid to the local enforcing agency and (b) provisions allowing defaults on fines or costs to be remedied by any means authorized by the Revised Judicature Act.

\* Under the marine safety part of the NREPA, failure to require children six years old or younger to wear flotation devices in boats subjects a violator to a maximum civil fine of \$100; anyone refusing to take a preliminary chemical breath analysis ("preliminary breath test," or "PBT") is responsible for a "civil infraction" and is subject to a civil fine of not more than \$100. House Bill 5547 (MCL 324.80142 et al.) would make both violations "state civil infractions" (but

apparently inadvertently deletes the word "civil" in the language describing the fine for flotation device violations). The bill also would delete most existing instances of language describing blood alcohol content in terms of percentage "by weight of alcohol" and instead would substitute language from the Michigan Vehicle Code, which describes blood alcohol content in terms of grams per milliliter of blood, per liters of breath, or per milliliters of urine.

\* Under the off-road vehicle (ORV) part of the NREPA, failure to apply for a certificate of title upon buying or acquiring an ORV is a "civil violation" with a civil fine of up to \$100 plus costs. Refusal to take a preliminary chemical breath analysis also is a "civil infraction" which is to be processed "in the same manner as a civil infraction under the [presumably, vehicle] code." Currently, all other violations of this part of the NREPA are misdemeanors until "the civil procedures act" is enacted, at which time certain specified violations (such as those involving ORV titles and certificates of origin, licensing requirements, dealer rentals, safety education, and certain operating conditions) are to become "civil violations" subject to "civil penalties" of not more than \$100. House Bill 5548 (MCL 324.81109 et al.) would change current references to "civil violations" and "civil infractions" to "state civil infractions," subject to maximum \$100 "civil fines." It would delete authorization to collect costs for violations of the title transfer requirements. It also would delete the requirement that PBT refusals be processed like traffic civil infractions, and would add maximum civil fines of \$100 for such refusals. Finally, the bill also would substitute language in the Michigan Vehicle Code describing blood alcohol content for current language describing BAC in terms of percentage "by weight of alcohol."

\* The snowmobile part of the NREPA makes it a "civil infraction" to fail to obtain the required snowmobile trail permit sticker subject to a flat fine of \$50 plus court costs. House Bill 5549 (MCL 324.82118 et al.) would make both failure to obtain required trail permit stickers and failure to permanently fix such stickers on snowmobiles as required "state civil infractions" subject to "civil fines" of up to \$50. It would delete authority to collect court costs, and would also substitute Michigan Vehicle Code language describing blood alcohol content for current language in terms of "percentage by weight of alcohol."

Currently, if someone under 21 years old refuses a preliminary chemical breath test (PBT) analysis as required under the Michigan Liquor Control Act, he or she is responsible for a state civil infraction. House Bill 5550 would amend the act (MCL 436.33b) to add a \$100 maximum civil fine for this state civil infraction. The bill also would delete language requiring that fifty percent of the criminal fines collected under this section of the liquor control act be credited to the Department of Public Health for substance abuse prevention, treatment, and rehabilitation.

Under the Revised Judicature Act, sheriffs and medical examiners who also are attorneys have certain limitations placed on their practice of law. They may not serve process in actions in which they act as someone's attorney or counsel, nor can they appear in court as attorney or counsel for a criminal defendant except in criminal or civil contempt proceedings. Violations of these prohibitions are civil infractions, and violators are subject to fines of up to \$500. House Bill 5551 would amend the RJA (MCL 600.586) to change these "civil infractions" to "state civil infractions" with "civil fines" of up to \$500.

Chapter 171 of the Revised Statutes of 1846 (titled "Of county jails and the regulation thereof") prohibits using prisoners' labor for private benefit or financial gain and prohibits sheriffs from privately benefitting or gaining financially from providing food to jail prisoners. Violations are civil infractions subject to maximum fines of \$500 plus the value of the private benefit or gain. House Bill 5552 would amend this chapter of the Revised Statutes (MCL 801.10) to change "civil infraction" to "state civil infraction," and would delete the provision allowing collection of the value of the private benefit or financial gain. The bill also would delete an inoperative provision that, until December 31, 1992, allowed certain sheriffs to receive private benefit or financial gain from providing food to jail prisoners.

The proposed changes, in table form, are as follows:

House Bill	Statute amended	Proposed change	MCL
5541	firearm registration act (Public Act 372 of 1927)	Change "civil violation" to "state civil infraction"	28.429
5542	veteran's licenses act (Public Act 359 of 1921)	Change "civil infraction" to "state civil infraction"; delete mandatory prosecution of violations	35.442
5543	Pupil Transportation Act	Add civil fines of up to \$100; process "civil infractions" like traffic civil infractions	257.1857 257.1859
5544	Natural Resources and Environmental Protection Act (NREPA)	Change land destruction "civil infraction" to "state civil infraction"; delete misdemeanor language, correct statutory references and use of "civil infraction"	324.504
5545	NREPA (pesticide ordinances)	Change pesticide "civil infraction" to "municipal civil infraction"	324.8328
5546	NREPA (soil erosion)	Add soil erosion "state civil infraction"; delete language requiring that fines be paid to local enforcing agencies, default remedies under Revised Judicature Act	324.839121
5547	NREPA (marine safety)	Add "state civil infraction" for failure to require young children to use flotation devices; change "civil infraction" for PBT refusal to "state civil infraction"; adopt vehicle code blood alcohol content (BAC) language	324.80142 324.80176 324.80180 324.80183 324.80184 324.80187
5548	NREPA (off-road vehicles)	Change ORV "civil violations/ infractions" to "state civil infractions"; delete ability to collect costs in addition to fines; add maximum \$100 civil fine for PBT refusal; adopt vehicle code BAC language	324.81109 324.81134 324.81136 324.81141 324.81147
5549	NREPA (snowmobiles)	Change flat \$50 fine for failure to obtain trail sticker permit to a maximum \$50 "civil fine"; delete ability to collect costs in addition to fines; make failure to obtain or to properly attach trail sticker a "state civil infraction"; adopt vehicle code BAC language	324.82118 324.82127 324.82139 324.82140 324.82143 324.82144

5550	Liquor Control Act	Delete requirement that half of certain fines go to Department of Public Health for substance abuse programs; add civil fine of up to \$100 for minor's refusal to take PBT	436.33b
5551	Revised Judicature Act	Change "civil infraction" involving attorney sheriffs and medical examiners to "state civil infraction"	600.586
5552	jail operation act (Chapter 171 of the Revised Statutes of 1846)	Change jail operation "civil infraction" to "state civil infraction"; delete ability to collect value of financial gain for using prisoners for private gain	801.10

**FISCAL IMPLICATIONS:**

The House Fiscal Agency reports no fiscal implications for House Bills 5541, 5542, 5544, 5545, 5546, 5547, 5548, 5549, and 5552. The HFA notes indeterminate state and local fiscal impacts for House Bill 5551, since the court cost and revenues from fines would depend on the number of cases that were tried and convicted under the bill, as well as the actual amount of the fine (which could be up to \$500 per case). Since House Bill 5543 would add new maximum civil fines of up to \$100, the HFA says that the bill may result in a small, indeterminate increase in civil fine revenues for state and local governments. (2-1-96)

The technical amendment to the Liquor Control Act proposed by House Bill 5550 presumably simply confirms the changes made to the act by Public Act 122 of 1995 (enrolled House Bill 4136). The House Legislative Analysis Section analysis (dated 8-10-95) of Public Act 122 (which changed the civil fines for underage drinking to criminal fines) noted that the civil fines collected under the act for fiscal year 1994 represented revenues of approximately \$82,000. Since revenues from criminal fines constitutionally must go to public libraries, presumably the Department of Public Health would lose at least this amount in revenues, which would then go to public libraries with no net loss of revenues to the state (in fact, since Public Act 122 increased the amounts of the now-criminal fines, public libraries might well see an indeterminate net gain in revenues from this source). (8-10-95)

**ARGUMENTS:**

**For:**

The bills are mainly technical in nature, "cleaning up" language or provisions that, in light of passage of the state civil infraction legislation (Public Acts 54 and 55 of 1995), needs changing to conform with current laws or, in the case of House Bill 5550, the 1963 state constitution. (As the enrolled analysis of Public Act 122 of 1995 [House Bill 4136] noted, when the civil fines for underage drinking under the Liquor Control Act were changed to criminal fines, they could no longer be sent (as had the civil fines) to the Department of Public Health for substance abuse treatment and rehabilitation services. Under Article VII, Section 9 of the 1963 state constitution, all fines assessed and collected for a breach of the penal laws are required to be used to fund public libraries. A misdemeanor offense is a criminal offense, so the fines that were increased under Public Act 122 were no longer able to be used to fund health department substance abuse programs.) Although most of the bills would make existing "civil infractions" or "civil violations" into "state civil infractions," House Bill 5543 would treat school bus "civil infractions" (under the Pupil Transportation Act) like the traffic violations that they basically are, while House Bill 5545 would make violations of local pesticide ordinances that were in conformity with the NREPA "municipal civil infractions" (instead of state civil infractions), which only makes sense, since these violations are enforced locally. House Bill 5544 would correct language in the NREPA that treats civil infractions incorrectly;

currently, the act incorrectly refers to park and recreation enforcement officers as being able to "arrest" someone without a warrant under circumstances that include committing "a civil infraction or misdemeanor". Since someone responsible for a civil infraction is issued a citation and is not arrested, the bill would correct this procedural section of the act. House Bills 5543 and 5550 would add prescribed maximum civil fines (in the former case, to a "civil infraction," in the latter, to an existing state civil infraction), while House Bill 5549 would change a flat \$50 fine to a maximum \$50 "civil fine," bringing these acts into conformity with the way other acts set fines for state civil infractions. House Bill 5546 would keep a consistent pattern for the distribution of civil fines and costs by removing language that currently requires that fines collected for soil erosion violations be paid to the local enforcing agency.

***Response:***

While the bills correct and standardize language in a number of acts with regard to civil infractions and civil violations, there are a number of other laws which still make reference to "civil violations" and which perhaps should also be considered in cleanup legislation. They include a section in the firearms registration act (MCL 28.430) other than that which House Bill 5541 would amend and sections in the State Construction Code Act (MCL 125.1523a), the Michigan Campaign Finance Act (MCL 169.215), the athletic services providers act (MCL 333.890), and the Local Historic Districts Act (MCL 399.215). There also are two sections of the NREPA that impose civil fines for first-time damage to property (MCL 324.2157 and 324.52908) amounting to \$100 or less (without calling the offense a "civil infraction") and that make subsequent offenses (or greater damage) misdemeanors. Because legislative efforts have been made to separate civil infractions from crimes, and because civil infractions are declared not to be lesser included offenses in crimes, categorizing these offenses may require a different approach than simply declaring them "civil infractions."

***POSITIONS:***

There are no positions at present. (2-7-96)

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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.