



Senate Fiscal Agency
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BILL ANALYSIS



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Senate Bill 36 (Substitute S-1 as passed by the Senate)
 Sponsor: Senator Michael J. Bouchard
 Committee: Judiciary

Date Completed: 6-13-95

RATIONALE

Chapter 47 of the Revised Judicature Act (RJA) provides for the seizure and forfeiture of personal and real property used for or obtained through the commission of any of some 60 crimes. Although drunk driving is not a profitable crime, as are many of the offenses included in the RJA's forfeiture provisions, it is a crime whose commission involves the dangerous use of a valuable item of property. To remove the tool used in perpetrating this crime and to provide a deterrent against drinking and driving, some people believe that habitual drunk driving offenders should be subject to the seizure and forfeiture of their vehicles.

CONTENT

The bill would amend Chapter 47 of the Revised Judicature Act to include either of the following violations of the Michigan Vehicle Code in the list of crimes to which seizure and forfeiture proceedings apply:

- Operating a vehicle while under the influence of liquor or a controlled substance (OUIL), when the violation occurred within seven years of a prior conviction.
- Operating a vehicle while visibly impaired due to the consumption of liquor or a controlled substance (OWI), when the violation occurred within 10 years of two or more prior convictions.

The bill would take effect on January 1, 1996.

Under the Vehicle Code, for the OUIL offense, "prior conviction" means an OUIL violation, or an OUIL or OWI violation that caused the death or serious impairment of a body function of another person. For the OWI offense, "prior conviction" means an OUIL or OWI violation, or an OUIL or OWI violation that caused the death or serious impairment of a body function of another person.

MCL 600.4701

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

Although various laws have been passed in recent years to stiffen criminal and civil penalties, habitual drunk driving continues to be a problem in Michigan. Another approach to punishing drunk drivers and attempting to deter repeat offenders is to take from a drunk driver the tool with which the crime is committed. The bill would accomplish this by including repeat drunk driving offenses among the crimes whose instrumentality or proceeds may be seized and forfeited under the RJA. Moreover, forfeiture of a habitual drunk driver's vehicle would provide funds for victims' services and law enforcement purposes, after security interests on the forfeited property were paid to a secured party who neither had prior knowledge of nor had consented to the crime.

Response: The bill could have little effect on the actual offender. Testimony before the Senate Judiciary Committee indicated that habitual OUIL offenders rarely have a car titled in their own name. Often, they drive vehicles titled in the name of a spouse, parent, sibling, or friend. Even if an offender's own vehicle were seized and forfeited, however, it would not necessarily keep him or her from driving a vehicle belonging to someone else.

Opposing Argument

Requiring the seizure of a vehicle for drunk driving would be an unduly extreme measure. In some cases, a spouse or partner could lose his or her rights to a jointly owned car, or a family could lose its only source of transportation. While punishing and deterring habitual drunk drivers are worthy goals, the effect of the bill could be to punish innocent co-owners or family members. Moreover, the confiscation of joint property could be

unconstitutional; recently, the United States Supreme Court agreed to address this issue.

maintaining custody of the property, advertising expenses, and court costs.

Opposing Argument

Rather than simply expanding the definition of “crime” under the RJA’s criminal forfeiture provisions, the bill should be used to improve the seizure and forfeiture process outlined in the RJA. For instance, the Act provides that property is not subject to seizure or forfeiture if its owner did not have prior knowledge of, or give consent to the commission of, the crime. Instead of prohibiting the seizure of such property, the RJA should allow seizure and specify a process for an owner to challenge forfeiture proceedings if the owner could show that he or she neither had knowledge of, nor had given consent to, the commission of the crime. In addition, the RJA requires the seizing agency to notify various parties of the seizure and intent to forfeit property, within seven days after property is seized. In many instances, this notification period may be too short to allow the identification of all of the parties who might have an ownership or security interest in the seized property. The bill should be used to extend that notice deadline.

The balance must be distributed by the court to the unit or units of government involved in effecting the forfeiture. Of the amount received by a unit of government, 75% must be used to enhance law enforcement and 25% to implement the Crime Victim’s Rights Act.

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FISCAL IMPACT

The bill could result in the distribution of additional proceeds from seizures and forfeitures of property to units of government involved in effecting a forfeiture, though the amount of the distribution cannot be determined at this time. Under Public Act 104 of 1988, the distribution of proceeds is done in the following order of priority:

- To pay any outstanding security interest of a secured party who had no prior knowledge of, nor had consented to, the commission of the crime.
- To satisfy any order of restitution in the prosecution of the crime.
- To pay the claim of each person who showed that he or she was a victim of the crime to the extent that the claim was not covered by an order of restitution.
- To pay any outstanding lien against the property that was imposed by a governmental unit.
- To pay the proper expenses of the proceedings for forfeiture and sale, including, but not limited to, expenses incurred during the seizure process,

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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.