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SALE OR INSTALLATION OF ILLEGAL CAR WINDOW TINTING

**House Bill 5264 (Substitute H-1)
First Analysis (10-28-97)**

**Sponsor: Rep. Liz Brater
Committee: Consumer Protection**

THE APPARENT PROBLEM:

Although state law makes it illegal to operate a motor vehicle in Michigan with certain types of window tinting or shading, the law does not prohibit installing such treatments. Since most consumers are unaware of exactly what degree of shading or tinting is allowed under the law, they often assume, wrongly, that the businesses who install these treatment will inform them whether a particular treatment is legal or not. As a result, unwary consumers often purchase treatments that violate state law and are unaware that these treatments are illegal until they are pulled over and ticketed for the violation. Many believe that businesses that install window treatments in motor vehicles should be responsible for informing consumers whether a particular treatment is legal. Legislation has been suggested to provide penalties for businesses that install potentially illegal window treatments in motor vehicles without disclosing to the customer that the window treatment could prevent the vehicle from being legally operated in Michigan.

pursue a civil action against the party who had installed or sold the treatment without

THE CONTENT OF THE BILL:

The bill would add a section to the Michigan Vehicle Code to provide penalties for the installation or sale of window treatments for motor vehicle windows that violate the code's current prohibitions against such treatments. Currently, the code restricts the types of tinting and shading that may be used on the front, rear, and side windows of a motor vehicle registered and operated in this state. The bill would specifically prohibit those who treat or install treated motor vehicle windows (with the express exemption of vehicle manufacturers) from selling or installing treatments or treated windows that are prohibited under the code.

A person or other legal entity who installed or sold motor vehicle window treatments that would violate the code's provisions would be guilty of a misdemeanor, punishable by a fine of \$250 for each violation. In addition, a person who had purchased a prohibited window treatment and was ticketed for operating a motor vehicle with improper window treatment could

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disclosing that it violated state law. The purchaser could recover damages for the cost of the installation or application of the window treatment, the cost of restoring the vehicle's windows to conformity with the code's provisions, \$250, and reasonable attorney fees involved in bringing the action. The bill would also allow the attorney general or a prosecuting attorney for a county where a person was violating the bill's provisions to bring a class action lawsuit to enjoin the person's actions.

The bill would take effect 90 days after its enactment and would apply only to treatments purchased or installed on or after the effective date.

MCL 257.709a

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill would have no fiscal impact on state or local governmental units. (10-22-97)

ARGUMENTS:

For:

It would likely come as a surprise to most citizens to find that they could easily purchase a window treatment for their vehicle that was prohibited by state law without being told that the treatment was prohibited. It is not unreasonable to expect a reputable company engaged in the business of selling and/or installing car window treatments to know which window treatments could be used on a motor vehicle operated in this state, and to inform its customers of that before selling the treatments to them. Currently, the law does little to encourage those who supply and install window treatments to refrain from installing potentially illegal window treatments or to inform their customers when a requested treatment would be illegal. The bill would remedy this fault in the law by giving a customer the right to sue a company that sold or installed a prohibited window treatment without disclosing to the customer that driving the vehicle with the treatment would be illegal.

Against:

This bill is unnecessary, since most reputable businesses already inform customers about the state law regarding window tinting and whether or not a particular window treatment will be legal. Even if these businesses did not already provide this information, it is the responsibility of the customer to know the law. This bill would attempt to make the business responsible for the customer. It is the customer's decision whether to buy a particular treatment and he or she should be responsible for knowing the law and picking an appropriate treatment based upon that knowledge. There are reasons a customer could want a window treatment that was not legal in Michigan; for example,

if a car is to be used in another state where the treatment in question was legal. It should not be the responsibility of the business to query every customer about his or plans for the vehicle in order to determine if the planned use would be legal or not. Even if the business does inquire of the customer what the intended use is, there is no guarantee that the customer will tell the truth. As a result, a customer could ask for an illegal window treatment, have it installed with the knowledge that it is not legal, drive the vehicle until ticketed and then sue the business that installed the window treatment. The bill offers no protection for a business from this type of behavior.

Response:

The risk of false claims goes both ways; businesses could claim that they had informed the customer about the window treatment laws and thereby, if believed, avoid the bill's penalties. This is a common problem in civil litigation. When opposing parties make contradicting claims, it is left to the trier of fact (the judge or the jury) to determine which party it will believe. In a lawsuit brought under the bill's provisions, the plaintiff/customer would have the burden of proof. A business could easily protect itself from false claims by requiring each customer who purchased a prohibited window treatment to sign a consent form indicating the customer had been fully informed of the law and the potential illegality of the window treatment.

Against:

The punishment outlined in the bill is excessive. There is no reason that the aggrieved party should be entitled to having his or her money refunded, having the cost of removing the illegal tinting paid, having his or her attorney fees paid, and \$250. While refunding and covering the cost of repairs seems fair, as does payment of attorney fees, the extra \$250 seems excessive. Presumably, a \$250 misdemeanor fine, and the prospect of having to make a refund and pay for repairs, will be sufficient to deter most businesses from installing prohibited window treatments. The extra \$250 paid to the customer only serves as a reward for the customer and

could serve to encourage customers to bring unwarranted accusations.

Response:

Actually, the \$250 seems an insufficient sum to lead consumers to file and pursue unlawful claims. Furthermore, after paying the \$80 for the civil infraction ticket for operating a vehicle with illegally tinted windows, the amount is only \$170.

POSITIONS:

The Michigan Consumer Federation supports the bill. (10-22-97)

Analyst: W. Flory

■ 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.