

Legislative Analysis



ALLOW CIVIL ACTIONS AGAINST THIEVES

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House Bill 4356 (Substitute H-2)

Sponsor: Rep. Tory Rocca

Committee: Judiciary

First Analysis (3-16-05)

BRIEF SUMMARY: The bill would amend the Revised Judicature Act to allow a civil action to recover treble damages to be brought against the person who stole or embezzled the property in question.

FISCAL IMPACT: The bill would have no fiscal impact.

THE APPARENT PROBLEM:

Legislation in the 1960s was enacted to allow the victim of a theft or embezzlement to bring a civil action against the "fence" or person who bought, received, or concealed the stolen property. Under the statute, the victim can recover up to three times the amount of actual damages sustained, plus costs and reasonable attorney fees. The provision did not, however, specifically mention that an action could be brought against the person who committed the original theft. The Michigan Court of Appeals recently ruled, in 2002, that the statute in question does not apply to the person who actually steals, embezzles, or converts the property; therefore, a victim may not currently sue the person who actually commits the theft (*Marshall Lasser PC v George*, 252 Mich App 104).

Legislation has been introduced to expand MCL 600.2919a to include the person who commits the theft, embezzlement, or conversion of another's property.

THE CONTENT OF THE BILL:

The bill would amend the Revised Judicature Act to expand the provision that specifies triple damage liability for offenses related to embezzling, stealing, receiving, and concealing stolen property to also apply to the person who embezzled, stole, or converted the property. The bill would also include possessing and concealing among the list of conducts that gives rise to the action.

Currently under the law, a person who is damaged as a result of another person's buying, receiving, or aiding in the concealment of stolen, embezzled, or converted property, or aiding in the concealment of any stolen, embezzled or converted property when the person knew that the property was stolen or embezzled or converted, can recover three times the amount of actual damages sustained, plus costs and reasonable attorney's fees. The law specifies, too, that this remedy is in addition to any other right or remedy the person might have at law, or otherwise.

Under House Bill 4356, a person damaged as a result of either or both of the following could recover three times the amount of damages sustained, plus costs and reasonable attorney fees, in addition to any other right or remedy:

- a) another person's stealing or embezzling property or converting property to the other person's own use; and/or
- b) another person's buying, receiving, possessing, concealing, or aiding in the concealment of stolen, embezzled, or converted property when the person knew that the property was stolen, embezzled, or converted.

MCL 600.2919a

ARGUMENTS:

For:

When the original legislation was enacted in the 1960s, it focused on the actions of the person who received, bought, or aided in the concealment of stolen property. Whether this was the original intent or an oversight, some feel that it is time to amend the law to allow an action to be brought against the person who committed the underlying crime. Recently, a victim of embezzlement tried to bring an action against the person who embezzled to recover damages, but the state appeals court held that the law as currently written only applies to the person receiving or buying the stolen property, and not to the person who actually took the property illegally. The bill would allow a victim to at least attempt to receive some monetary compensation for the damages that he or she suffered as a result of the crime. The bill would not interfere with any criminal charges or penalties that the perpetrator may face. In addition, the corresponding criminal statutes were amended in 1979 to include the acts of "possessing" and "concealing" in the list of conduct for which a criminal charge could be brought; the bill would therefore incorporate these acts in the statute pertaining to recovering treble damages.

POSITIONS:

There are no positions on the bill at this time.

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