



Senate Fiscal Agency
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BILL ANALYSIS

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House Bill 4356 (Substitute H-2 as reported without amendment)

Sponsor: Representative Tory Rocca

House Committee: Judiciary

Senate Committee: Judiciary

Date Completed: 5-31-05

RATIONALE

The Revised Judicature Act (RJA) provides that a person damaged as a result of another person's buying, receiving, or aiding in the concealment of stolen, embezzled, or converted property, when the person buying, receiving, or aiding in the concealment knew that the property was stolen, embezzled, or converted, may recover three times the amount of actual damages sustained, plus costs and reasonable attorney's fees. The RJA, however, does not provide for an action against the person who actually stole, embezzled, or converted the property. This omission came to light in a 2002 Michigan Court of Appeals case (*Lasser, PC v George*, 252 Mich App 104), in which a victim of embezzlement sought, and was denied, treble damages from the person who embezzled the funds. Some people believe that the RJA should allow a victim to recover treble damages from the actual thief.

In addition, the criminal proscription in the Michigan Penal Code against buying, receiving, or aiding in the concealment of stolen, embezzled, or converted money, goods, or property also includes possessing or concealing such money, goods, or property (MCL 750.535). The treble damages civil remedy in the RJA, however, includes only buying, receiving, or aiding in the concealment of stolen property. It has been suggested that the civil remedy also should include possessing and concealing stolen property.

CONTENT

The bill would amend the Revised Judicature Act to allow a person to recover three times the amount of

actual damages, plus costs and reasonable attorney fees, for another person's theft of property. The bill also would add possessing and concealing to a provision that presently allows treble damages for another person's buying, receiving, or aiding in the concealment of stolen property.

The bill would delete the current provision that allows a person to recover treble damages, plus costs and attorney fees, if the person was damaged by another person's buying, receiving, or aiding in the concealment of stolen property. The bill specifies, instead, that a person damaged as a result of either or both of the following could recover three times the amount of actual damages sustained, plus costs and reasonable attorney fees:

- Another person's stealing or embezzling property or converting property to the other person's own use.
- 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.

As with the current provision, the remedy provided by the bill would be in addition to any other right or remedy the person had at law or otherwise.

The bill specifies that it would apply to causes of action that arose after its effective date.

MCL 600.2919a

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

In *Lasser, PC v George*, the plaintiff sought treble damages from the defendant, who had embezzled the plaintiff's property, under the RJA's civil remedy for buying, receiving, or aiding in the concealment of stolen, embezzled, or converted property. The trial court denied treble damages, and the Court of Appeals affirmed that decision. The Court of Appeals held that, by its clear language, the RJA provision did not apply, and stated that "...the statute is not designed to provide a remedy against the individual who has actually stolen, embezzled, or converted the property". The Court pointed out that the actions specifically proscribed by the RJA provision all occur after the property has been stolen. According to the Court, "If the Legislature had meant for the statute to also apply to the thief as well as someone who aids him, it could have written the statute to include the thief's action in possessing or concealing the property."

If a victim of theft may seek enhanced damages from a person who deals in the victim's stolen property, it seems logical that he or she also should be able to pursue such a remedy against the person who actually stole the money or property in the first place. By authorizing the recovery of treble damages for another person's theft, and including possessing or concealing in the current authorization for recovering treble damages, the bill would give victims of theft another avenue for seeking redress in civil court.

Supporting Argument

While the Penal Code's prohibition against dealing in stolen property includes possessing and concealing stolen, embezzled, or converted money, goods, or property, the RJA's treble damages provision includes only buying, receiving, or aiding in the concealment of stolen property. In *Lasser*, the Court of Appeals cited a 1978 Supreme Court case (*People v Kyllonen*, 402 Mich 135) that addressed whether the criminal prohibition, which then included only buying, receiving, or aiding in the concealment of stolen property, provided an alternative provision under which a thief

could be convicted. The *Kyllonen* Court concluded that the criminal statute applied only to those assisting the thief. The *Lasser* Court pointed out that, after the *Kyllonen* decision, the Legislature adopted Public Act 11 of 1979, which added possessing and concealing stolen property to the Penal Code's list of proscribed behaviors, but no similar amendment was made to the RJA's civil remedy. The *Lasser* Court concluded that the Legislature's decision not to amend the RJA at the time it changed the Penal Code "was purposeful and signals the intent that" the RJA's treble damages provision "not apply to the person who actually steals, embezzles, or converts the property at issue". By adding possessing or concealing to the RJA, the bill would bring the civil remedy into conformity with the criminal proscription.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

To the extent that the bill would increase the number of civil actions brought, it could increase local court costs.

Fiscal Analyst: Bethany Wicksall

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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.