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BILL ANALYSIS

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Senate Bill 276 (as introduced 2-19-09)
Sponsor: Senator Ron Jelinek
Committee: Transportation

Date Completed: 10-6-09

CONTENT

The bill would amend the Michigan Vehicle Code to remove a provision that prohibits a person from operating a motor vehicle with a dangling ornament or other suspended object that obstructs the operator's vision, except as authorized by law.

MCL 257.709

BACKGROUND

In *United States of America v. Lonnie Ray Davis*, the Sixth Circuit Court of Appeals ruled on December 19, 2008, that the language in the Michigan Vehicle Code prohibiting dangling ornaments or suspended objects was unconstitutionally vague, although the Court withdrew that opinion less than two weeks later (No. 07-1964).

Lonnie Ray Davis was arrested after a police officer pulled him over for having a four-inch air freshener hanging from his rearview mirror. Upon discovering that Davis was driving without a license, the officer placed him under arrest. A search uncovered a stun gun, a loaded pistol, an open bottle of alcohol, and about 24 grams of cocaine base, as well as \$655 in cash. Davis was charged with being a felon in possession of a firearm and possession of cocaine base with intent to distribute. During the trial, Davis moved to suppress the evidence obtained during the traffic stop, arguing that the police officer did not have probable cause for the stop because the air freshener was too small to be considered an obstruction of his vision. The U.S. District Court denied the motion and Davis pleaded guilty to both charges. He then appealed the decision to deny his motion to suppress the evidence.

Upon hearing the appeal, the Sixth Circuit Court of Appeals ruled that the statute was unconstitutionally vague because it does not give law enforcement officers or the public adequate guidance as to how it should be interpreted. Instead, according to the Court, each officer has wide discretion to interpret the statute, and since objects hanging from rearview mirrors are relatively common, the law could be subject to arbitrary or discriminatory enforcement or used as a pretext to stop individuals suspected of committing other violations.

Nevertheless, the Court found that the arresting officer had acted in good faith on the assumption that the statute was valid, and that therefore the evidence uncovered during the traffic stop was admissible in that case, although the Court warned that law

enforcement officials should not use those provisions to justify traffic stops in future similar cases.

On December 31, 2008, the Sixth Circuit Court issued a one-sentence statement withdrawing that opinion.

Legislative Analyst: Curtis Walker

FISCAL IMPACT

The bill would have an indeterminate fiscal impact on the State. Under current law, individuals convicted of violating MCL 257.709(c) are punishable by a maximum fine of \$100, imprisonment for up to 90 days, or both. By removing the prohibition against ornaments or other objects suspended from the rearview mirror of vehicles, the bill could result in a reduction in the collection of associated fines and a reduction in the costs of incarceration. In all likelihood, the fiscal impact of the bill would be negligible.

Fiscal Analyst: Matthew Grabowski

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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.