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BILL



ANALYSIS

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House Bill 4499 (Substitute H-1 as passed by the House)
Sponsor: Representative Gary Glenn
House Committee: Judiciary
Senate Committee: Judiciary

Date Completed: 8-17-15

CONTENT

The bill would amend Chapter 38 (Public Nuisances) of the Revised Judicature Act to establish a clear and convincing standard of proof in an action to abate a nuisance by forfeiture or sale of a vehicle, boat, aircraft, or other personal property.

Under Chapter 38, a building, vehicle, boat, aircraft, or place is a nuisance if it is used for illegal activities described in Section 3801 (e.g., prostitution; gambling; the unlawful manufacture, transportation, or sale of a controlled substance or alcoholic beverage; animal fighting; or human trafficking). Chapter 38 allows the Attorney General, a county prosecutor, or the resident of a county to maintain an action in the name of the State to enjoin any person from using property for any of the specified purposes.

If the court finds that the material allegations of the complaint are true, the court must enter a judgment and order of abatement. Personal property may be seized and forfeited, and a building or place may be ordered closed.

Under the bill, the court would have to enter a judgment and order of abatement if the court found that the plaintiff had satisfied the burden of proof and that the material allegations of the complaint were true. If the plaintiff sought abatement of a nuisance by forfeiture or sale of a vehicle, boat, aircraft, or other personal property, however, the plaintiff would have the burden of proving by clear and convincing evidence that the vehicle, boat, aircraft, or property was used for or in furtherance of the activity or conduct that constituted the nuisance, as described in Section 3801.

The amendments would apply only to an action begun on or after the bill's effective date.

The bill would take effect 90 days after it was enacted.

MCL 600.3815

BACKGROUND

An order of abatement under Chapter 38 of the Revised Judicature Act may order the removal of all furniture, fixtures, and contents from a building or place; the sale of the furniture, fixtures, and contents; the closing of the building or place; and any other equitable relief the court considers necessary. Any vehicle, boat, or aircraft found to be a nuisance is subject to the same order and judgment as any furniture, fixtures, and contents.

Upon the sale of the furniture, fixtures, contents, vehicle, boat, or aircraft, the officer executing the sale must do the following, in the following order:

- Deduct the expenses of keeping the property and the costs of the sale.
- Pay all secured interests and liens according to their priorities, if the secured party or lien holder did not have any notice that the property was used for the maintenance of a nuisance.
- Pay the costs of prosecution, including reasonable attorney fees.
- Pay the balance to the State Treasurer to be credited to the State's General Fund.

If property is declared to be a nuisance because it has been used for human trafficking, however, any amount determined to be due to the victim must be paid from the proceeds before the costs of prosecution are paid and any balance is paid to the State Treasurer.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill could result in a decrease in proceeds collected by local law enforcement agencies, prosecutors, and the State from the disposition of forfeited property. To the extent that local law enforcement and prosecutors are reimbursed from the proceeds, and the State General Fund realizes gains from the sale of nuisance property, the bill could have a negative fiscal impact on State and local government.

The receipt of forfeiture proceeds allows law enforcement agencies and prosecuting attorneys to use budgeted funds for other purposes, such as staff compensation. If the agencies and prosecutors received less reimbursement under the bill, the costs of nuisance enforcement and prosecution have to be absorbed within existing budgets, diverting funding from other purposes.

Fiscal Analyst: John Maxwell

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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.