



House
Legislative
Analysis
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LITTERING PENALTIES

House Bill 4008 as enrolled
Public Act 111 of 1995
Second Analysis (6-29-95)

AS ENROLLED

Sponsor: Rep. David Anthony
House Committee: Conservation,
Environment and Great Lakes
Senate Committee: Natural Resources and
Environmental Affairs

THE APPARENT PROBLEM:

In recent years, as communities across the state have become more committed to reducing environmental contamination, local governments have worked to introduce recycling programs and to educate citizens on ways to reduce waste. Most local governments, however, have also increased trash pickup fees to recoup the costs of these programs. In addition, cities that once hauled away old appliances and furniture, at little or no cost to property owners, now charge additional fees for that service. As a result, the age-old problem of littering has taken on new dimensions, as people resort to the practice of illegally abandoning old household appliances and other garbage in rural areas. Old stoves, refrigerators, and ironing boards have been seen in state national forests and on the edge of private property in northern counties.

Reportedly, some of those who litter are persons who own cottages -- or even campers -- in the northern parts of the state, and who discard old appliances in this manner rather than hauling them home or having them transported to a landfill. Solid waste disposal has also become a profitable business for private entrepreneurs, many of whom -- according to reports -- are disposing of garbage on private lands, in spite of recent laws that have been passed to punish those who are caught. For example, Public Act 106 of 1963, the litter law, was amended in 1993 to increase the penalties for littering and to impose mandatory community service on offenders. It is generally agreed that stricter laws are needed to punish those who indulge in littering on a large scale. Some argue that it would be easier for such violators to be prosecuted if certain types of littering could be punished with civil fines, as an alternative to (or in addition to)

criminal penalties. It is further argued that those guilty of dumping large quantities of litter should be made to forfeit personal property.

THE CONTENT OF THE BILL:

Under the Natural Resources and Environmental Protection Act, Public Act 451 of 1994, the driver of a vehicle or vessel is presumed to be responsible for litter that is thrown, dropped, dumped, deposited, placed or left from the vehicle or vessel on public or private property or water. The offense of littering is a misdemeanor, subject to a \$100 to \$500 fine. In addition, the court must impose community service in the form of litter-gathering labor. House Bill 4008 would amend the act to delete from the list of offenses litter that is merely "dropped;" to impose additional penalties; and to provide for civil remedies.

Penalties. Under the bill, the following offenses would be considered state civil infractions, and penalties would be imposed in proportion to the volume of litter, as follows:

*Litter of less than one cubic foot in volume would be subject to a civil fine of up to \$800.

*Litter of one to three cubic feet in volume would be subject to a civil fine of up to \$1,500.

*Litter of more than three cubic feet in volume would be subject to a civil fine of up to \$2,500. A civil fine of up to \$5,000 would be imposed for a violation of this provision in a subsequent proceeding.

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A default in the payment or installment payment of the civil fines or costs imposed under these provisions would be subject to remedies provided under the Revised Judicature Act. The court could, in addition, require the defendant to pay either the cost of removing all litter that is the subject of the violation and the cost of damages to any land, water, wildlife, vegetation, or other natural resource or facility damaged by the violation, or the reasonable expense of impounding a vehicle used in littering, or both. Money collected under this provision would be distributed to the governmental entity that brought an enforcement action or impounded a vehicle.

These penalties would not apply to violations of sections 8903 (which prohibits throwing or causing litter to fall into the path of or to hit a vehicle traveling on a highway) and 8905 (which concerns litter that is produced at a health facility or laboratory, or consists of infectious wastes, and hypodermic needles, scalpels, body parts or other medical type wastes whether or not they are infectious). Violations of those sections already carry their own specific penalties.

Impoundment of Vehicles. Under the bill, a vehicle that was involved in the commission of prohibited activities could be seized and impounded by a peace officer. The impounded vehicle would be subject to a lien, subordinate to a prior lien of record, in the amount of any fine, costs, and damages that the defendant could be ordered to pay. The vehicle would be released from impoundment, however, if the defendant or a person with an ownership interest in the vehicle posted a \$750 cash or surety bond. The vehicle would also be released -- and the lien discharged -- upon payment of the fine, costs, and damages or upon a judicial determination that the defendant was not responsible for the violation. Additionally, the court would be required to assess costs in the amount of damages resulting from the defendant's inability to use the vehicle due to its impoundment against the government entity that brought the action. If, on the other hand, a court determined that the defendant was responsible for a violation of the act, and the defendant defaulted in the payment, then bond would be forfeited and applied to the fine, costs, damages, or installment. Any remaining unpaid amount would be certified by the court to the attorney for the governmental entity that brought the action.

Foreclosure Sale. The attorney for the governmental entity could also enforce the lien by a foreclosure sale. The sale would be conducted in the same manner, and would be subject to the same prerogatives, as an execution sale that is implemented to enforce a money judgement. The attorney would be required to send written notice of the time and place of the foreclosure sale to each person with a known ownership interest in or lien of record on the vehicle, at least 21 days before the date of the sale. In addition, 10 days before the sale the attorney would be required to publish notice of the sale in a newspaper of general circulation in the county in which the vehicle was seized. The proceeds of the foreclosure sale would be distributed in the following order of priority:

- * To discharge a lien on the vehicle that had been recorded prior to the creation of the lien imposed under the provisions of the bill.
- * To the clerk of the court to pay the fine, costs, and damages that the defendant had been ordered to pay under the provisions of the bill.
- * To discharge any lien that had been recorded after the creation of the first lien on the vehicle, imposed under the provisions of the bill.
- * To the owner of the vehicle.

Tie-bar, effective date. The bill is tie-barred to House Bill 4426 (Public Act 54 of 1995, which amended the Revised Judicature Act to establish procedures under which violations of state law may be adjudicated as state civil infractions). The bill would take effect June 1, 1995, and its provisions would expire December 31, 1997.

MCL 324.8905a et al.

FISCAL IMPLICATIONS:

The House Fiscal Agency estimates that the provisions of the bill would have an indeterminate impact on state funds. According to Department of Natural Resources (DNR) statistics, officials have prosecuted an average of 156 littering cases per year during the last three years. Under the provisions of the bill, some of these cases could receive fines of up to \$800, some fines of up to \$1,500, and some would be fined up to \$2,500 or \$5,000. However, the

agency cannot predict how many of the 156 cases would be fined in each category, and therefore cannot predict the total amount that would be collected in fines. (3-10-95)

According to the Senate Fiscal Agency, the bill would result in a revenue increase of between \$125,000 and \$780,000, depending on the number of violations and the types of fines assessed. (5-25-95)

ARGUMENTS:

For:

Littering causes degradation of the environment and pollution of water resources, presents safety hazards, and mars the beauty of Michigan's countryside. It is a problem that affects both urban and rural areas in the state. These problems were acknowledged by the House Republican Task Force on Recycling and Waste Reduction, when it said in its 1993 report that "Michigan must come down harder on individuals who illegally dump garbage along our roads." However, in the past, penalties for littering have been perceived as being woefully inadequate; and fines, capped at \$500, as too low. The pecuniary rewards of this crime apparently outweighed the threat of criminal penalties, since some violators of the state's littering law apparently have found it worth their time and energy to drive for several miles to dispose of garbage. By allowing law enforcement officials to charge littering as a civil infraction, in addition to criminal prosecution, and to impose stiff fines for large-scale violations, litterers are more likely to receive appropriate punishment and be effectively deterred from repeat offenses. Further, the provisions of the bill would deter violators with the possibility that automobiles used in committing the violation could be impounded. Most important, the bill would focus on those planning to dump large items: people found dumping large items (greater than one cubic foot in volume) could have a lien placed on their cars, or, for that matter, on their Winnebagos!

For:

Michigan's state parks are currently operating on a tight budget. If, as anticipated, the provisions of the bill reduce the amount of litter currently found in state parks, then Department of Natural Resources' (DNR) personnel costs for cleaning up this litter would be reduced, leaving sorely needed funds available for other park needs.

Against:

The bill represents a fundamental inequity. In the first place, under the bill, an automobile used in the commission of littering could be impounded, irrespective of the amount of gain realized from that crime. The punishment would not necessarily fit the crime, but rather could vary from case to case. Under this provision, it is easy to envision a young person having his or her car impounded for the relatively minor offense of throwing away an empty soft drink carton. In the second place, mandatory penalties such as the bill's can operate against the interests of justice by undermining judicial discretion to tailor sentences to fit the circumstances of a case.

Response:

Penalties such as are proposed under the bill can deter would be violators. In fact, the bill is modeled after the state's successful drug forfeiture law, which ensures that property used for, or obtained through, criminal activity is forfeited to the government. In addition, by allowing prosecutors to charge violators as civil, rather than criminal offenders, the bill would make it easier for offenders to be convicted (the burden of proof for a civil offense lies in a "preponderance of the evidence," which is less than the burden of proof in criminal offense, in which guilt must be proven "beyond a reasonable doubt").

Against:

The provisions of the bill are vague. For example, it is unfair to expect a local police officer to make an on-the-spot estimate on whether an item is more or less than one cubic foot in volume, and to make an arrest based on that decision. The bill should provide a different method for police officers to gauge whether an item falls under the provisions of the bill or not.