



Senate Fiscal Agency  
P. O. Box 30036  
Lansing, Michigan 48909-7536

BILL



ANALYSIS

Telephone: (517) 373-5383  
Fax: (517) 373-1986  
TDD: (517) 373-0543

Senate Bill 276 (Substitute S-1 as passed by the Senate)  
Sponsor: Senator Ron Jelinek  
Committee: Transportation

(as enrolled)

Date Completed: 8-3-10

### **RATIONALE**

Michigan law generally prohibits a driver from hanging ornaments or other objects from a vehicle's rearview mirror, with certain exceptions for disabled parking placards or other items. That prohibition is designed to prevent obstruction of the driver's view of the roadway, but some people have complained that the law is vague and may be enforced selectively or arbitrarily. The law was the subject of a Federal lawsuit involving an individual who was stopped for having an air freshener hanging from his rearview mirror, and was subsequently arrested for unrelated crimes. (Please see **BACKGROUND** for a summary of *United States of America v Lonnie Ray Davis*.) It has been suggested that the language should be revised to give drivers a clear sense of what objects are and are not allowed to be hung from a rearview mirror, and to ensure consistent enforcement of the law.

### **CONTENT**

The bill would amend the Michigan Vehicle Code to revise 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.

The bill would delete the reference to a "dangling ornament or other suspended" object. Under the bill, a person would be prohibited from operating a motor vehicle with an object that obstructed the operator's vision, except as authorized by law.

MCL 257.709

### **BACKGROUND**

In *United States of America v Lonnie Ray Davis*, the U.S. Court of Appeals for the Sixth Circuit 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 and subsequently issued a revised opinion (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.

In its December 19, 2008, opinion, 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 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.

In a revised opinion filed on April 30, 2009, the Court affirmed the U.S. District Court's guilty verdict. The appellate court found that the arresting officer did have probable cause to stop Davis based on the sight of the air freshener, and stated that language of the Vehicle Code is unqualified. Since the stop did not violate the Fourth Amendment, the evidence collected during the stop should not have been suppressed. The revised opinion did not address the issue of whether the law was unconstitutionally vague, since that argument was not a part of Davis's defense.

## **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**

Many vehicle owners in Michigan hang objects from their rearview mirrors; these items include graduation tassels, air fresheners, strings of beads, and fuzzy dice. Some drivers actually are required to display signs on their mirrors, including placards for drivers with disabilities or parking permits. Because of the vagueness of the statutory language and the various exceptions to the prohibition, even those who want to comply with the law may be uncertain about which objects are permitted and which are not.

In some cases, there has seemed to be selective enforcement of the law. Some drivers who have been stopped for having an object hanging from their rearview mirror

have complained that the item was no bigger than a placard for a driver with disabilities, which is permitted under the Code. If the goal of the restriction is to promote safety, it is difficult to justify permitting some objects while prohibiting others of the same size. The current language of the Code gives law enforcement officers too much latitude in deciding which ornaments violate the law, and may sometimes serve as a pretext for stopping drivers suspected of other crimes.

The bill would simplify the language and prohibit only those objects that obstructed the driver's view, making it easier for drivers to comply with the law and reducing the potential for inconsistent or discriminatory enforcement, while still leaving law enforcement officers with some discretion.

### **Opposing Argument**

Rearview mirrors are a safety tool to allow drivers to see behind them, and should not be used to hang trinkets or decorations. Objects dangling in front of a driver can be a distraction and can prevent the driver from seeing a portion of the roadway, leading to accidents that otherwise could have been prevented. The current language is necessary to ensure that the driver has a clear, unobstructed view. Enforcement is designed to prevent accidents before they happen, and law enforcement officers need latitude to determine which objects may be dangerous to the driver and to others.

Legislative Analyst: Curtis Walker

### **FISCAL IMPACT**

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Matthew Grabowski

#### A0910\S276a

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.