House
Legislative
Analysis
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MONEY LAUNDERING

Senate Bill 196 (Substitute H-2)
First Analysis (4-14-94)

Sponsor: Sen. William Van Regenmorter
Senate Committee: Judiciary
House Committee: Judiciary

THE APPARENT PROBLEM:

Drug dealing is the scourge of many communities, spawning violent crime, spreading fear, and decreasing property values. The spread of drug abuse has ruined countless lives that might otherwise have been healthy and productive. Thus, it is no surprise that state and federal law enforcement authorities have made the "war on drugs" one of their highest priorities, often with special efforts aimed at the drug "kingpins" whose activities may be responsible for the importation and distribution of millions of dollars worth of illegal drugs. Federal authorities, however, have various investigative and enforcement tools at their disposal that state authorities lack. One such tool is a money laundering statute, which enables authorities to "nail" drug dealers and other criminals at a point when they are often especially vulnerable: that is, when they attempt to dispose of and "launder" the large quantities of cash that their criminal enterprises generate. Although Michigan authorities may turn to federal authorities for investigation and prosecution under the federal money laundering statute, the state is dependant on federal investigative and prosecutorial priorities. Many, including the governor, have urged that Michigan enact its own money laundering law.

THE CONTENT OF THE BILL:

The bill would amend the Michigan Penal Code to establish penalties for four degrees of money laundering. The four degrees would differ according to the presence or absence of three elements: whether the amount of money involved was $10,000 or more; whether the money derived from a drug offense; and, whether a certain element of intent was present (that is, whether there was an intent to promote crime or conceal the criminal nature of the proceeds or avoid a state or federal transaction reporting requirement). The bill would take effect October 1, 1994.

Generally speaking, money laundering would be either receiving the proceeds of certain crimes or participating in a financial transaction involving the proceeds of certain crimes. In either case, there would have to be prior actual knowledge of both of the following: (1) that the money or property constituted criminal proceeds; and, (2) that the transaction was meant to conceal the criminal nature of the proceeds or to avoid a state or federal transaction reporting requirement, or that the transaction will help in the criminal offense from which the proceeds derived. The bill would apply not only to criminal proceeds of specified criminal offenses, but also "substituted proceeds," meaning property or gain realized through the sale or exchange of proceeds from a specified criminal offense.

The specified criminal offenses to whose proceeds the bill would apply would be: felony violations of the cigarette tax act, felonious disposal of hazardous waste, felony drug offenses, felony welfare fraud, Medicaid fraud, securities fraud, displaying or distributing pornography to minors, felony arson offenses, various felony offenses involving bank bonds and property, bribery, jury tampering, child pornography, felony credit card fraud, felony embezzlement, felony offenses involving explosives or bombs, extortion, felony false pretenses, felony forgery or counterfeiting, securities fraud, various gambling offenses, murder, various horse racing offenses, kidnapping, felony larceny offenses, perjury, various prostitution offenses, robbery, felony offenses involving receiving stolen property, obscenity, and a conspiracy, attempt, or solicitation to commit any of these listed offenses. (Note: the bill refers to a violation of Section 9 of Public Act 265 of 1947, the cigarette tax act. However, this act is scheduled to be repealed May 1, 1994, under the provisions of Public Act 327 of 1993 [enrolled House Bill 5104], which was part of the school finance reform package.)

Fourth-degree money laundering would be money laundering that did not meet the requirements of first- to third-degree money laundering. Fourth-degree money laundering would be a misdemeanor punishable by imprisonment for up to two years, and/or a fine of up to $10,000 or twice the value of the criminal proceeds involved, whichever was greater.

Except for cases that constituted second- or first-degree money laundering, third-degree money laundering would be money laundering involving criminal proceeds of $10,000 or more, or in which a drug offense was involved, or in which there was intent to promote crime or conceal the criminal nature of the proceeds or avoid a state or federal transaction reporting requirement. Third-degree money laundering would be a felony punishable by up to five years in prison, and/or a fine of up to $50,000 or twice the value of the criminal proceeds, whichever was greater.

Except for cases that constituted first-degree money laundering, second-degree money laundering would be money laundering involving proceeds of $10,000 or more in which the proceeds derived from a drug offense, or in which there was intent to promote crime or conceal the criminal nature of the proceeds or avoid a transaction reporting requirement. (Second-degree money laundering thus would involve the presence of at least two elements: a minimum amount of money, plus either drug involvement or a certain element of intent. Third-degree would require the presence of only one of the elements.) Second-degree money laundering would be a felony punishable by up to ten years in prison, and/or a fine of up to $100,000 or twice the value of the criminal proceeds, whichever was greater.

First-degree money laundering would be money laundering involving proceeds of $10,000 or more in which the proceeds derived from a drug offense and the specified element of intent (that is, to promote crime, etc.) was present. First-degree money laundering would be a felony punishable by up to 20 years, and/or a fine of up to $500,000 or twice the value of the criminal proceeds, whichever was greater.

Law enforcement undercover operations also would be addressed. A person who participated in a financial transaction involving property that a law enforcement officer (or someone acting with the approval of a law enforcement officer) represented to be the proceeds or substituted proceeds of a specified criminal offense would be guilty of a felony, if that person intended to promote the commission of a criminal offense, or intended to conceal the nature of the property believed to be proceeds or to avoid a state or federal transaction reporting requirement. If the amount of money involved was $10,000 or more and was represented to be drug money, the crime would be punishable by up to 20 years in prison and/or a fine of up to $500,000. If either the $10,000 threshold was met, or the money was represented to be drug money, the crime would be punishable by up to ten years in prison, a fine of up to $100,000 or both. In all other cases, the crime would be punishable by up to five years in prison, a fine of up to $50,000, or both.

To obtain reported information and access to the financial crimes enforcement network, the state police, in consultation with the attorney general, could enter into agreements with federal authorities. The state police also could dissemininate information obtained to state and local law enforcement authorities as authorized by the federal government.

MCL 750.411j et al.

HOUSE COMMITTEE ACTION:

The House Judiciary Committee adopted a substitute bill that differed from the Senate-passed version primarily in not including penalties for engaging in a "continuing criminal enterprise."

FISCAL IMPLICATIONS:

With regard to a version of the bill that also established penalties for racketeering, the Senate Fiscal Agency said the bill would have an indeterminate impact on state government. The Department of Corrections would experience increased costs for those individuals who violated the provisions of the bill. At that time, there were no avilable data that would indicate how may individuals could be sentenced under the bill. (3-3-93)

ARGUMENTS:

For:

Money laundering statutes are aimed at capturing major criminals at a point in their enterprises where

they are often vulnerable: in the course of disposing of, converting, or "laundering" large amounts of cash. Although there is a federal money laundering statute, there is no comparable Michigan law. However, in a speech delivered April 29, 1992, Governor Engler said that Michigan needs some of the same tools the federal government uses when it goes after a John Gotti and a Manuel Noriega. He pointed out that police and prosecutors would find it easier to bust career drug lords with passage of various laws, including one to crack down on money laundering. The bill, modeled on federal statute, would enact such a law, thus minimizing Michigan's dependence on federal investigative and prosecutorial priorities by placing this tool in the hands of state and local authorities. Without the bill, federal priorities and limited resources can result in missed opportunities or in plea bargains for defendants that local authorities believe should be prosecuted and incarcerated. With the bill, Michigan authorities would have the option of pursuing investigations and prosecutions under a state money laundering law, thus enabling local priorities to prevail. With more effective enforcement tools at their disposal, state and local authorities can be more effective in incarcerating and incapacitating the major crime lords and their lieutenants whose activities take the lives of so many individuals and spread blight across so many communities.

Against:

Criticisms of details of the bill may arise from several points of view. For one thing, the list of "specified criminal offenses" to whose proceeds the bill would apply is quite long, and includes many offenses that may be committed without involvement in drug trafficking or organized crime; the bill could get used against minor offenders, as well as drug kingpins and organized crime lords. Moreover, the bill authorizes stiff criminal penalties for offenders caught by police "sting" operations; concerns may arise about overzealous use of this alternative, particularly in investigations where police used questionable undercover tactics. Finally, the bill's $10,000 threshold may be all too easy to evade by breaking up transactions into smaller amounts; to be more effective, threshold amounts should be cumulative, applying to the sum of transactions occurring over a minimum period of time.

Response:

To be guilty of a felony under the bill, someone would have to be involved in laundering at least $10,000. Lesser offenses would be misdemeanors, thus ensuring that minor offenders were not punished excessively.

POSITIONS:

The Department of State Police supports the bill. (4-13-94)

The Prosecuting Attorneys Association of Michigan supports the bill. (4-12-94)

The Fraternal Order of Police supports the concept of the bill. (4-12-94)