

HOUSE BILL No. 5005

June 27, 1991, Introduced by Reps. Nye, Bandstra, Fitzgerald, Perry Bullard, Bartnik, Robertson, Dalman, DeMars, Dolan and Jaye and referred to the Committee on Judiciary.

A bill to amend sections 356c and 356d of Act No. 328 of the Public Acts of 1931, entitled

"Michigan penal code,"

as added by Act No. 20 of the Public Acts of 1988, being sections 750.356c and 750.356d of the Michigan Compiled Laws; to add sections 356e, 356f, 356g, 356h, 356i, 356j, 356k, 356l, 356m, and 356n; and to repeal certain parts of the act.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 356c and 356d of Act No. 328 of the
2 Public Acts of 1931, as added by Act No. 20 of the Public Acts of
3 1988, being sections 750.356c and 750.356d of the Michigan
4 Compiled Laws, are amended and sections 356e, 356f, 356g, 356h,
5 356i, 356j, 356k, 356l, 356m, and 356n are added to read as
6 follows:

1 Sec. 356c. (1) A person who does any of the following in a
2 store or in its immediate vicinity is guilty of retail fraud in
3 the first degree, a felony punishable by imprisonment for not
4 more than 2 years, or a fine of not more than \$1,000.00, or
5 both:

6 (a) While a store is open to the public, alters, transfers,
7 removes and replaces, conceals, or otherwise misrepresents the
8 price at which property is offered for sale, with the intent not
9 to pay for the property or to pay less than the price at which
10 the property is offered for sale, if the resulting difference in
11 price is more than \$100.00.

12 (b) While a store is open to the public, steals property of
13 the store that is offered for sale at a price of more than
14 \$100.00.

15 (c) With intent to defraud, obtains or attempts to obtain
16 money or property from the store as a refund or exchange for
17 property that was not paid for and belongs to the store, if the
18 amount of money, or the value of the property, obtained or
19 attempted to be obtained is more than \$100.00.

20 (2) A person who violates section 356d and has 1 or more
21 prior convictions under this section, section ~~218, 356,~~ 356d,
22 356H, 356I, or ~~360,~~ 356J, OR FORMER SECTION 218, 356, OR 360,
23 or a local ordinance substantially corresponding to this section
24 or section ~~218, 356,~~ 356d, 356H, 356I, or ~~360~~ 356J, OR FORMER
25 SECTION 218, 356, OR 360, is guilty of retail fraud in the first
26 degree.

1 (3) A person who commits the crime of retail fraud in the
2 first degree shall not be prosecuted under ~~the felony provision~~
3 ~~of section 356, or under section 218 or 360~~ SECTION 356H, 356I,
4 OR 356J.

5 Sec. 356d. (1) A person who does any of the following in a
6 store or in its immediate vicinity is guilty of retail fraud in
7 the second degree, a misdemeanor punishable by imprisonment for
8 not more than 93 days, or a fine of not more than \$100.00, or
9 both:

10 (a) While a store is open to the public, alters, transfers,
11 removes and replaces, conceals, or otherwise misrepresents the
12 price at which property is offered for sale, with the intent not
13 to pay for the property or to pay less than the price at which
14 the property is offered for sale.

15 (b) While a store is open to the public, steals property of
16 the store that is offered for sale.

17 (c) With intent to defraud, obtains or attempts to obtain
18 money or property from the store as a refund or exchange for
19 property that was not paid for and belongs to the store.

20 (2) A person who commits the crime of retail fraud in the
21 second degree shall not be prosecuted under ~~the felony provision~~
22 ~~of section 356, or under section 218 or 360~~ SECTION 356H, 356I,
23 356J, 356K, OR 356L.

24 SEC. 356E. FOR THE PURPOSES OF THIS SECTION AND SECTIONS
25 356F TO 356N, THE WORDS AND PHRASES DEFINED IN SECTIONS 356F AND
26 356G HAVE THE MEANINGS ASCRIBED TO THEM IN THOSE SECTIONS.

1 SEC. 356F. (1) "COIN MACHINE" MEANS A COIN BOX, TURNSTILE,
2 VENDING MACHINE, OR OTHER MECHANICAL OR ELECTRONIC DEVICE OR
3 RECEPTACLE DESIGNED TO RECEIVE A COIN OR BILL OF A CERTAIN DENOM-
4 INATION OR A TOKEN MADE FOR THE PURPOSE, AND IN RETURN FOR THE
5 INSERTION AND DEPOSIT OF THE COIN, BILL, OR TOKEN, AUTOMATICALLY
6 TO OFFER, PROVIDE, ASSIST IN PROVIDING, OR PERMIT THE ACQUISITION
7 OF PROPERTY OR A PUBLIC OR PRIVATE SERVICE.

8 (2) "DECEPTION", EXCEPT AS PROVIDED IN SUBSECTION (3), MEANS
9 ANY OF THE FOLLOWING ACTS:

10 (A) KNOWINGLY CREATING OR CONFIRMING A FALSE IMPRESSION.

11 (B) AFTER HAVING CREATED OR CONFIRMED A FALSE IMPRESSION,
12 KNOWINGLY FAILING TO CORRECT THAT IMPRESSION.

13 (C) KNOWINGLY PREVENTING ANOTHER PERSON FROM ACQUIRING
14 INFORMATION PERTINENT TO THE DISPOSITION OF THE PROPERTY
15 INVOLVED.

16 (D) KNOWINGLY SELLING OR OTHERWISE TRANSFERRING OR ENCUMBER-
17 ING PROPERTY WITHOUT DISCLOSING A LIEN, ADVERSE CLAIM, OR OTHER
18 LEGAL IMPEDIMENT TO THE ENJOYMENT OF THE PROPERTY, WHETHER OR NOT
19 THAT IMPEDIMENT IS VALID OR IS A MATTER OF OFFICIAL RECORD.

20 (E) PROMISING PERFORMANCE WHILE INTENDING NOT TO PERFORM,
21 BUT DECEPTION AS TO A PERSON'S INTENTION OR OTHER STATE OF MIND
22 SHALL NOT BE INFERRED FROM THE FACT ALONE THAT THE PERSON DID NOT
23 SUBSEQUENTLY PERFORM AS PROMISED.

24 (3) DECEPTION DOES NOT INCLUDE FALSITY AS TO A MATTER HAVING
25 NO PECUNIARY SIGNIFICANCE OR PUFFING BY MAKING STATEMENTS
26 UNLIKELY TO DECEIVE AN ORDINARY PERSON. AS USED IN THIS

1 SUBSECTION, "PUFFING" MEANS THE EXAGGERATED COMMENDATION OF
2 WARES.

3 (4) "DEPRIVE PERMANENTLY" MEANS ANY OF THE FOLLOWING:

4 (A) TO WITHHOLD PROPERTY OR CAUSE IT TO BE WITHHELD FROM A
5 PERSON PERMANENTLY OR FOR SO EXTENDED A PERIOD OR UNDER SUCH CIR-
6 CUMSTANCES THAT A SIGNIFICANT PORTION OF THE PROPERTY'S ECONOMIC
7 VALUE OR THE USE AND BENEFIT OF THE PROPERTY IS LOST TO THE
8 PERSON.

9 (B) TO DISPOSE OF PROPERTY SO AS TO MAKE IT UNLIKELY THAT
10 THE OWNER WILL RECOVER IT.

11 (C) TO RETAIN PROPERTY WITH INTENT TO RESTORE IT TO THE
12 OWNER ONLY IF THE OWNER PURCHASES OR LEASES IT BACK OR PAYS A
13 REWARD OR OTHER COMPENSATION FOR ITS RETURN.

14 (D) TO SELL, GIVE, PLEDGE, OR OTHERWISE TRANSFER AN INTEREST
15 IN PROPERTY.

16 (E) TO SUBJECT PROPERTY TO THE CLAIM OF A PERSON OTHER THAN
17 THE OWNER.

18 (5) "OBTAIN" MEANS TO BRING ABOUT A TRANSFER OR PURPORTED
19 TRANSFER OF A LEGALLY RECOGNIZED INTEREST IN PROPERTY, WHETHER TO
20 THE OBTAINER OR ANOTHER PERSON.

21 (6) "OWNER" MEANS A PERSON, OTHER THAN THE DEFENDANT, WHO
22 HAS POSSESSION OF OR ANY OTHER INTEREST IN THE PROPERTY INVOLVED,
23 EVEN THOUGH THAT POSSESSION OR INTEREST IS UNLAWFUL, AND WITHOUT
24 WHOSE CONSENT THE DEFENDANT HAS NO AUTHORITY TO EXERT CONTROL
25 OVER THE PROPERTY. PROPERTY IN THE POSSESSION OF A PERSON SHALL
26 NOT BE CONSIDERED TO BE OWNED BY ANOTHER PERSON WHO HAS ONLY A
27 SECURITY INTEREST IN THE PROPERTY, EVEN IF LEGAL TITLE IS IN THE

1 OTHER PERSON PURSUANT TO A CONDITIONAL SALES CONTRACT OR OTHER
2 SECURITY AGREEMENT.

3 (7) "PROPERTY" MEANS ANYTHING OF VALUE, INCLUDING MONEY,
4 PERSONAL PROPERTY, REAL PROPERTY, A THING IN ACTION, A COMPUTER
5 PROGRAM, COMPUTER DATA, AND EVIDENCE OF DEBT OR CONTRACT.

6 (8) "STOLEN" MEANS OBTAINED OR SUBJECTED TO UNAUTHORIZED
7 CONTROL AS A RESULT OF THE THEFT.

8 SEC. 356G. "THEFT" MEANS THE COMMISSION OF ANY OF THE FOL-
9 LOWING ACTS WITH THE INTENT TO DEPRIVE THE OWNER PERMANENTLY OF
10 THE PROPERTY:

11 (A) KNOWINGLY OBTAINING OR EXERTING UNAUTHORIZED CONTROL
12 OVER THE PROPERTY OF THE OWNER. IF THE PROPERTY IS IMMOVABLE,
13 THEFT INCLUDES THE UNAUTHORIZED TRANSFER OF THE PROPERTY OR AN
14 INTEREST IN THE PROPERTY TO BENEFIT THE PERSON TRANSFERRING THE
15 PROPERTY OR INTEREST OR ANOTHER PERSON NOT ENTITLED TO THE
16 PROPERTY.

17 (B) KNOWINGLY OBTAINING CONTROL OVER THE PROPERTY OF THE
18 OWNER BY DECEPTION.

19 SEC. 356H. (1) A PERSON WHO DOES EITHER OF THE FOLLOWING IS
20 GUILTY OF FIRST DEGREE THEFT:

21 (A) COMMITS THEFT OF PROPERTY THAT IS MORE THAN \$20,000.00
22 IN VALUE.

23 (B) COMMITS THEFT OF PROPERTY OF ANY VALUE IF THE PROPERTY
24 IS TAKEN FROM THE PERSON OF ANOTHER.

25 (2) FIRST DEGREE THEFT IS A FELONY PUNISHABLE BY IMPRISON-
26 MENT FOR NOT MORE THAN 10 YEARS OR A FINE OF NOT MORE THAN

1 \$20,000.00 OR 3 TIMES THE VALUE OF THE PROPERTY STOLEN, WHICHEVER
2 IS GREATER, OR BOTH THE IMPRISONMENT AND THE FINE.

3 (3) THE INDICTMENT OR INFORMATION CHARGING A PERSON WITH
4 FIRST DEGREE THEFT SHALL SPECIFY THE SUBDIVISION OF
5 SUBSECTION (1) UNDER WHICH THE PERSON IS CHARGED.

6 SEC. 356I. A PERSON WHO COMMITS THEFT OF PROPERTY THAT IS
7 MORE THAN \$5,000.00 IN VALUE IS GUILTY OF SECOND DEGREE THEFT, A
8 FELONY PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 5 YEARS OR A
9 FINE OF NOT MORE THAN \$10,000.00 OR 3 TIMES THE VALUE OF THE
10 PROPERTY STOLEN, WHICHEVER IS GREATER, OR BOTH THE IMPRISONMENT
11 AND THE FINE.

12 SEC. 356J. (1) A PERSON WHO DOES EITHER OF THE FOLLOWING IS
13 GUILTY OF THIRD DEGREE THEFT:

14 (A) COMMITS THEFT OF PROPERTY OF ANY VALUE, OTHER THAN
15 RETAIL FRAUD IN THE FIRST OR SECOND DEGREE AS PROVIDED IN
16 SECTIONS 356C AND 356D, IF THE PROPERTY IS TAKEN IN A BUILDING OR
17 FROM A MOTOR VEHICLE OR COIN MACHINE.

18 (B) COMMITS THEFT OF PROPERTY THAT IS MORE THAN \$1,000.00 IN
19 VALUE.

20 (2) THIRD DEGREE THEFT IS A FELONY PUNISHABLE BY IMPRISON-
21 MENT FOR NOT MORE THAN 2 YEARS OR A FINE OF NOT MORE THAN
22 \$5,000.00 OR 3 TIMES THE VALUE OF THE PROPERTY STOLEN, WHICHEVER
23 IS GREATER, OR BOTH THE IMPRISONMENT AND THE FINE.

24 (3) THE INDICTMENT OR INFORMATION CHARGING A PERSON WITH
25 THIRD DEGREE THEFT SHALL SPECIFY THE SUBDIVISION OF
26 SUBSECTION (1) UNDER WHICH THE PERSON IS CHARGED.

1 SEC. 356K. A PERSON WHO COMMITS THEFT OF PROPERTY THAT IS
2 MORE THAN \$250.00 IN VALUE IS GUILTY OF FOURTH DEGREE THEFT, A
3 MISDEMEANOR PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 1 YEAR
4 OR A FINE OF NOT MORE THAN \$2,000.00 OR 3 TIMES THE VALUE OF THE
5 PROPERTY STOLEN, WHICHEVER IS GREATER, OR BOTH THE IMPRISONMENT
6 AND THE FINE.

7 SEC. 356L. A PERSON WHO COMMITS THEFT OF PROPERTY, OTHER
8 THAN RETAIL FRAUD IN THE FIRST OR SECOND DEGREE AS PROVIDED IN
9 SECTIONS 356C AND 356D, IS GUILTY OF FIFTH DEGREE THEFT, A MISDE-
10 MEANOR PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 90 DAYS OR A
11 FINE OF NOT MORE THAN \$500.00 OR 3 TIMES THE VALUE OF THE PROP-
12 ERTY STOLEN, WHICHEVER IS GREATER, OR BOTH THE IMPRISONMENT AND
13 THE FINE.

14 SEC. 356M. FOR THE PURPOSES OF SECTIONS 356H TO 356L, THE
15 VALUE OF PROPERTY STOLEN IN THEFTS COMMITTED PURSUANT TO A SCHEME
16 OR COURSE OF CONDUCT, WHETHER THE THEFTS ARE FROM THE SAME PERSON
17 OR SEVERAL PERSONS, MAY BE AGGREGATED IN DETERMINING THE DEGREE
18 OF THE OFFENSE.

19 SEC. 356N. IT IS A DEFENSE TO PROSECUTION FOR THEFT IN ANY
20 DEGREE THAT THE PERSON ACTED UNDER AN HONEST CLAIM OF RIGHT TO
21 THE PROPERTY INVOLVED OR AN HONEST BELIEF THAT THE PERSON HAD A
22 RIGHT TO ACQUIRE OR DISPOSE OF THE PROPERTY AS HE OR SHE DID.

23 Section 2. Sections 218, 356, 356a, 357, 360, 362, and 363
24 of Act No. 328 of the Public Acts of 1931, being sections
25 750.218, 750.356, 750.356a, 750.357, 750.360, 750.362, and
26 750.363 of the Michigan Compiled Laws, are repealed.