



HOUSE BILL No. 5555

May 12 1994 Introduced by Reps Mathieu Nye and Profit and referred to the Committee on Judiciary

A bill to amend sections 2952 and 2953 of Act No 236 of the Public Acts of 1961, entitled as amended

Revised judicature act of 1961,
section 2952 as added by Act No 276 of the Public Acts of 1984
and section 2953 as added by Act No 50 of the Public Acts of
1988, being sections 600 2952 and 600 2953 of the Michigan
Compiled Laws

THE PEOPLE OF THE STATE OF MICHIGAN ENACT

1 Section 1 Sections 2952 and 2953 of Act No 236 of the
2 Public Acts of 1961 section 2952 as added by Act No 276 of the
3 Public Acts of 1984 and section 2953 as added by Act No 50 of
4 the Public Acts of 1988, being sections 600 2952 and 600 2953 of
5 the Michigan Compiled Laws, are amended to read as follows

6 Sec 2952 (1) Exclusive of ~~any~~ penal sanctions ~~which~~
7 THAT may apply ~~any~~ A person who makes draws, utters or

1 delivers ~~any~~ A check draft or order for the payment of money
 2 upon ~~any~~ A bank or other depository, or A person, firm, or cor-
 3 poration, ~~which~~ THAT refuses to honor the check draft or
 4 order for lack of funds or credit to pay or because the maker has
 5 no account with the drawee and who fails to pay the amount of
 6 the check, draft or order in cash as provided in subsections (2)
 7 and (3) ~~shall be~~ IS liable for the penalty provided in subsec-
 8 tion (4)

9 (2) ~~Any~~ A payee may make a written demand for payment of a
 10 check draft, or order of the type specified in subsection (1)
 11 which demand shall be delivered to the maker by certified mail,
 12 return receipt requested and delivery restricted to the
 13 addressee The text of the written demand shall be as follows

14 On (date) a check drawn by you for \$ was
 15 returned to us dishonored for [] not sufficient funds
 16 [] no account If you do not pay to us within 30
 17 days ~~of~~ AFTER the time you receive this notice the
 18 full amount of the check in cash we have the right to
 19 bring an action against you for 2 times the amount of
 20 the dishonored check (\$) or ~~\$50.00~~ \$100.00
 21 whichever is greater, or to make a criminal complaint
 22 against you If you do pay to us within 30 days ~~of~~
 23 AFTER the time you receive this notice the full amount
 24 of the check in cash we will not take further action
 25 against you

1 (3) If the maker fails to pay the amount of the check
2 draft, or order in cash to the payee within 30 days ~~of~~ AFTER
3 receipt of the written demand for payment made pursuant to sub-
4 section (2), the maker ~~shall be~~ IS liable for the penalty pro-
5 vided in subsection (4)

6 (4) Except as otherwise provided in this subsection and sub-
7 section (5) a maker who fails to make payment pursuant to sub-
8 section (3) ~~shall be~~ IS liable to the payee including the
9 amount of the check draft or order for damages of double the
10 amount of the check draft or order which damages shall be not
11 less than ~~\$50 00~~ \$100 00 and not more than \$500 00 unless
12 justice would not be served by an award of double damages and
13 would be served by an award of a lesser amount ~~If the amount~~
14 ~~of the check is over \$500 00, the maker shall only be liable for~~
15 ~~the amount of the check~~

16 (5) If, before the trial of an action brought pursuant to
17 this section the maker pays to the payee in cash the amount of
18 the dishonored check, draft or order plus reasonable costs
19 ~~such~~ WHICH costs SHALL not ~~to~~ exceed ~~\$50 00~~ \$250 00 sub-
20 section (4) ~~shall~~ DOES not apply

21 (6) An action under this section may be brought in the small
22 claims division of the district court if it does not exceed the
23 jurisdiction of the small claims division or in any other appro-
24 priate court If the amount of the check exceeds the jurisdic-
25 tion of the small claims division the action may still be
26 brought in the small claims division but the amount of damages

1 awarded shall not exceed the jurisdiction of the small claims
2 division

3 (7) If subsequent to an action brought pursuant to this
4 section a criminal prosecution arising out of the same transac-
5 tion is brought a judgment in favor of a plaintiff payee ~~shall~~
6 ~~be~~ IS void and ~~any~~ money paid pursuant to the judgment shall
7 be ordered repaid to the defendant maker If a criminal prosecu-
8 tion arising out of the same transaction is brought before or
9 during an action brought pursuant to this section the action
10 shall be dismissed

11 Sec 2953 (1) In addition to ~~any~~ penal sanction a
12 person who commits an act for which he or she could be charged
13 with the crime of retail fraud in the first ~~or~~ second OR
14 THIRD degree as defined in sections 356c and 356d of the
15 Michigan ~~Penal Code~~ PENAL CODE Act No 328 of the Public Acts
16 of 1931 being sections 750 356c and 750 356d of the Michigan
17 Compiled Laws, ~~shall be~~ IS liable to the merchant who is the
18 victim of the act for the full retail price of unrecovered prop-
19 erty or recovered property that is not in salable condition and
20 a civil penalty of ~~+0~~ 4 times the retail price of the property
21 but not less than ~~\$40 00 and not more than~~ \$100 00

22 (2) The merchant who is the victim of retail fraud in the
23 first ~~or~~ second OR THIRD degree or an agent of the merchant
24 may make a written demand for payment of the amount for which the
25 person who committed the act is liable under subsection (1)
26 Except for a sole proprietorship a member of management other
27 than the initial detaining person shall evaluate the validity of

1 the accusation that the person committed the act and shall
 2 approve the accusation in writing before a written demand for
 3 payment is issued The demand for payment shall be delivered to
 4 the person from whom payment is demanded in person or by certi-
 5 fied mail, return receipt requested, and delivery restricted to
 6 the addressee The text of the written demand shall be as
 7 follows

8 We have cause to believe that on _____ (date) you com-
 9 mitted retail fraud in the first ~~degree or~~ second, OR THIRD
 10 degree by _____ (description of action and personal
 11 property) in our store If, within 30 days ~~of~~ AFTER the time
 12 you receive this notice, you return the property in salable con-
 13 dition or pay to us \$_____ which represents the full retail
 14 price/remaining balance of the full retail price of the property,
 15 plus an amount of ~~+0~~ 4 times the retail price of the property
 16 but not less than ~~\$40 00 and not more than~~ \$100 00 equaling a
 17 total amount of \$_____ we will not take further civil action
 18 against you for this incident

19 If you fail to comply with this demand we have the right to
 20 bring an action against you in court for \$_____ which represents
 21 the full retail price/remaining balance of the full retail price
 22 of the property a ~~\$200 00~~ civil penalty OF THE GREATER OF 4
 23 TIMES THE RETAIL PRICE OF THE PROPERTY OR \$100 00 and ~~our~~
 24 ~~reasonable~~ costs ~~, not to exceed \$50 00~~ OF \$250 00 equaling a
 25 total amount of \$_____

1 (3) A merchant shall include with the demand for payment
2 that is delivered to a person pursuant to subsection (2) an
3 attachment The text of the attachment shall be as follows

4 You are (your minor child is) accused of
5 retail fraud Michigan law allows the merchant to
6 ask in writing that you return or pay for the mer-
7 chandise and pay an amount of \$_____ If you
8 do no further civil action will be taken against
9 you This civil action has no effect on possible
10 criminal action

11 You do not have to respond to this letter if
12 you are innocent or choose not to respond
13 However if you do not respond the merchant may
14 then sue you in small claims court Both you and
15 the merchant will state your case in your own words
16 without lawyers The decision of the small claims
17 court is final and cannot be appealed

18 If you wish to be represented by a lawyer you
19 may ask that the case against you be heard by the
20 district court You and the merchant may be repre-
21 sented by a lawyer and have the right to appeal to
22 a higher court

23 Questions regarding court procedures can be
24 answered by the clerk of the district court

1 (4) If the person to whom a written demand is made under
2 subsection (2) complies with the written demand within 30 days
3 after its receipt that person shall incur no further civil
4 liability to the merchant from the act of retail fraud

5 (5) A person who commits an act described in subsection (1)
6 and who fails to comply with a written demand under
7 subsection (2) ~~shall be~~ IS liable to the merchant for the full
8 retail price of the property unless the property was recovered
9 in salable condition plus a civil penalty of ~~\$200 00~~ OF 4
10 TIMES THE RETAIL PRICE OF THE PROPERTY BUT NOT LESS THAN
11 \$100 00 and ~~reasonable~~ costs ~~not exceeding \$50 00~~ OF
12 \$250 00

13 (6) If a civil action is filed pursuant to this section and
14 before the trial of the action is commenced the person to whom a
15 written demand was made under subsection (2) pays the merchant in
16 cash the amount demanded subsection (5) ~~shall~~ DOES not apply

17 (7) An action under this section may be brought in the small
18 claims division of the district court or in any other court of
19 competent jurisdiction If the amount demanded exceeds the
20 jurisdiction of the small claims division, the action may still
21 be brought in the small claims division but the amount recovered
22 shall not exceed the jurisdiction of the small claims division

23 (8) A merchant may recover damages in an amount allowable
24 under this section in a civil action in a court of competent
25 jurisdiction against the parent or parents of an unemancipated
26 minor who lives with his or her parent or parents and who commits

1 an act described in subsection (1) THE DAMAGES RECOVERED UNDER
 2 THIS SUBSECTION SHALL NOT EXCEED \$5,000 00

3 (9) A merchant may recover the amount for which a person is
 4 civilly liable under this section only if a formal police report
 5 is filed with the prosecuting attorney or municipal attorney
 6 alleging that the person has committed retail fraud in the first
 7 ~~or~~ second OR THIRD degree or violated a local ordinance sub-
 8 stantially corresponding to section 218 356 356c or 356d of
 9 the Michigan penal code, Act No 328 of the Public Acts of 1931,
 10 being sections 750 218 750 356 750 356c and 750 356d of the
 11 Michigan Compiled Laws regardless of the outcome of any criminal
 12 action

13 (10) Notwithstanding any other provision of this section, a
 14 merchant shall not recover a civil penalty for an act of retail
 15 fraud in the first ~~or~~ second, OR THIRD degree with regard to a
 16 particular item of property if the merchant violated section 3 of
 17 Act No 449 of the Public Acts of 1976 being section 445 353 of
 18 the Michigan Compiled Laws with regard to that item of property
 19 and the violation was not caused by the person who committed the
 20 act of retail fraud

21 Section 2 This amendatory act shall not take effect unless
 22 all of the following bills of the 87th Legislature are enacted
 23 into law

24 (a) House Bill No 4969

25 (b) House Bill No 4970