



**House  
Legislative  
Analysis  
Section**

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**REVISE LARCENY STATUTES**

**House Bill 4197**

**Sponsor: Rep. Kirk A. Profit**

**House Bill 4198**

**Sponsor: Rep. Michael E. Nye**

**House Bill 4199**

**Sponsor: Rep. Eric Bush**

**Committee: Judiciary and Civil Rights**

**Complete to 1-31-95**

**A SUMMARY OF HOUSE BILLS 4197 - 4199 AS INTRODUCED 1-30-95**

The bills constitute a package of legislation to revise penalties for larceny offenses and increase civil penalties for retail fraud. Generally, current criminal penalties would be replaced with a four-tier structure providing for escalating penalties for offenses involving greater sums; repeat offenses would carry special penalties. Separate penalty structures, however, would exist for passing bad checks, credit card fraud, and retail fraud. The demarcation between misdemeanor and felony offenses, now generally set at \$100, would be increased to \$1,000. House Bill 4197 and House Bill 4198 would amend the Michigan Penal Code (MCL 750.131 et al.) to revise criminal penalties for 15 different larceny offenses, plus bad check offenses, credit card fraud, and retail fraud. House Bill 4199 would amend the Revised Judicature Act (MCL 600.2952 and 600.2953) with regard to civil remedies available to victims of bad checks and retail fraud, increasing costs and damages that a business may recover in a civil action (often a small claims action). The bills would take effect October 1, 1995. House Bill 4199, however, could not take effect unless House Bill 4198 was enacted. A more detailed explanation follows.

Four-tier structure. Current penalties for 15 different larceny offenses carrying misdemeanor/felony thresholds ranging from \$5 to \$500 would be replaced with a four-tier structure setting the felony threshold at \$1,000. If the property involved was valued at less than \$200, the offense would be a misdemeanor punishable by up to 93 days in jail, and/or a maximum fine of \$500 or three times the value of the property, whichever was greater. If the property was worth at least \$200 but less than \$1,000, the offense would be a misdemeanor punishable by up to one year in jail, and/or a maximum fine of up to \$2,000 or three times the value of the property, whichever was greater.

If the property was worth more than \$1,000 but less than \$20,000, the offense would be a felony punishable by up to five years in prison, and/or a maximum fine of \$10,000 or three times the value, whichever was greater. If the property was worth \$20,000 or more, the offense would be a felony punishable by up to ten years in prison and/or a fine of up to three times the value of the property.

House Bills 4197-4199 (1-31-95)

This structure would apply to the following offenses: use of a financial transaction device to withdraw or transfer funds in violation of contractual limits; embezzlement; embezzlement by chattel mortgagor, vendee, or lessee; embezzlement of chattel mortgage; embezzlement of property belonging partly to oneself; false pretenses with intent to defraud; fraudulent use of a telephone credit card number or someone else's telephone number in order to obtain telephone service; "theft" of utility service, including meter tampering; larceny; larceny from a motor vehicle or a trailer; larceny by refusal to return a rented motor vehicle; malicious destruction of personal property; malicious destruction of a building; malicious destruction of tombs and grave markers; and, receiving and concealing stolen property.

Aggregate damage. With several offenses, damage could be figured in the aggregate so as to increase the level of the offense. This would be the case with cemetery vandalism and malicious destruction of personal property.

Repeat offenders. For certain offenses, enhanced penalties would be provided for repeat offenders. If a person was convicted of what would otherwise be a misdemeanor offense of receiving stolen property, but had two or more prior convictions for receiving stolen property, he or she would be guilty of a five-year felony and subject to a fine of up to \$10,000 or three times the value of the property involved, whichever was greater. For four offenses (ATM fraud, telephone credit card fraud, larceny from a motor vehicle, and refusal to return a rental vehicle), repeat offenses would be elevated as follows: a second offense at the 93-day misdemeanor level would be a one-year misdemeanor; a third offense at the 93-day misdemeanor level would be a five-year felony; and, a second offense at the one-year misdemeanor level would be a five-year felony (for each of these repeat offenses, applicable fines would be elevated as well). Enhanced penalties also would apply to repeat offenses involving bad checks or credit card fraud (see below).

If the prosecutor intended to seek an enhanced penalty that served to elevate a 93-day misdemeanor to a one-year misdemeanor, he or she would have to list the prior conviction on the complaint and information. The existence of the prior conviction would be determined by a judge, without a jury, at sentencing. The existence of a prior conviction under these circumstances could be established by any relevant evidence, including: a copy of the judgment of conviction; a transcript of a prior trial, plea-taking, or sentencing; information contained in the presentence report; or, the defendant's statement.

Checks, credit cards; criminal penalties. "Bad check" offenses would continue to be subject to penalties that varied according to the amount of the check and whether the offense was a repeat violation. However, threshold amounts would be increased (although the misdemeanor/felony threshold generally would be \$500, rather than the \$1,000 generally proposed for other felony offenses), and stiffer penalties would be available. At present, a first-offense passing of a bad check of \$50 or less is a misdemeanor subject to up to 93 days in jail, a fine of up to \$100, or both. Under the bill, the 93-day misdemeanor penalty would apply to bad checks of \$100 or less, and the possible fine would be increased to \$500. A second offense is now a six-month misdemeanor, which the bill would elevate to a one-year misdemeanor, punishable by a fine of up to \$1,000, rather than the \$250 maximum that now applies. A third offense would be a felony (rather than the one-year misdemeanor it now

is), punishable by imprisonment for up to 13 months, and/or a fine of up to \$2,000, rather than the \$500 that now applies.

At present, if the amount of the check is between \$50 and \$200, a first or second offense is a one-year misdemeanor also punishable by a \$500 fine. Under the bill, passing a bad check worth between \$100 and \$500 would be a one-year misdemeanor carrying a maximum fine of \$1,000 or three times the amount payable, whichever was greater. A third or subsequent offense would be a 13-month felony carrying a maximum fine of \$2,000, rather than the \$500 that now applies to analogous offenses.

At present, if the amount of the check is over \$200, the offense is a 13-month felony punishable by a fine of up to \$500. The bill would raise the threshold to \$500, and increase the maximum fine to the greater of \$2,000 or three times the amount payable.

Credit card fraud, which now carries a \$100 threshold between misdemeanor and felony offenses, would be subject to the same penalty structure proposed for passing bad checks.

Retail fraud; criminal penalties. Currently, first-degree retail fraud is shoplifting or tag-switching involving a "theft" of \$100 or more, while second-degree retail fraud applies to values of less than \$100. Under the bill, first-degree retail fraud, which is now a two-year felony subject to a fine of up to \$1,000, would be applied to offenses involving \$1,000 or more, and the maximum penalties would be increased to five years in prison and a fine of \$10,000 or three times the value involved, whichever was greater.

Second-degree retail fraud would be a one-year misdemeanor, rather than the 93-day misdemeanor it now is, and the maximum fine would be increased from \$100 to \$2,000 or three times the value involved, whichever was greater.

The offense of third-degree retail fraud would be created, to apply to offenses involving less than \$200. Third-degree retail fraud would be a 93-day misdemeanor also punishable by a fine of up to \$500 or three times the value involved, whichever was greater.

Bad checks; civil remedies. Under both current law and the bill, criminal prosecution and civil remedies applicable to bad check offenders would be exclusive remedies (that is, an offender would not be subject to both criminal and civil penalties). At present, when a check written for \$500 or less is returned for nonsufficient funds (NSF), the payee may obtain damages of twice the amount of the check, but not less than \$50 or more than \$500; for an NSF check written for over \$500, the maker is liable for the amount of the check. The bill would eliminate the distinction between checks under and over \$500, as well as the current limitations on damages, instead specifying damages of twice the amount of the check or \$100, whichever was greater. The bill also would institute a \$25 processing fee that would have to be paid to the merchant (or other payee) in addition to the face amount of the check in order to prevent the imposition of civil damages and costs. In addition, costs of \$250 would be assessed if a case went to trial; for a case resolved before trial, costs of up to \$250 (up from \$50) would be recoverable.

**Retail fraud; civil remedies.** The currently-available civil remedy for retail fraud is a civil penalty of ten times the value involved, but not less than \$40 or more than \$100. The bill would revise this to four times the value involved, or \$100, whichever was greater. Allowable costs for a defendant's failure to respond to a written demand would be increased from \$50 to \$250. There is at present no specific ceiling on the amount which a minor's parents may be held liable; the bill would limit the amount that parents would have to pay to \$5,000. These civil remedies would be limited to first- and second-degree retail fraud.