



**Senate Fiscal Agency**  
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**BILL**



**ANALYSIS**

**Telephone: (517) 373-5383**  
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House Bill 4197 (Substitute S-3 as reported)  
House Bill 4198 (Substitute S-3 as reported)  
House Bill 4199 (Substitute S-2 as reported)  
Sponsor: Representative Kirk A. Profit (House Bill 4197)  
Representative Michael E. Nye (House Bill 4198)  
Representative Eric Bush (House Bill 4199)  
House Committee: Judiciary and Civil Rights  
Senate Committee: Judiciary

Date Completed: 1-29-96

### **RATIONALE**

Michigan's statutes punishing various sorts of larceny generally distinguish between misdemeanor and felony offenses based on the value of the property stolen. Typically, this threshold is \$100, although it can be as low as \$5 (for larceny from a motor vehicle or trailer) or as high as \$500 (for use of a utility service without consent). For simple larceny, the \$100 threshold has remained unchanged since 1957, when Public Act 69 of that year doubled the \$50 threshold that had been in effect at least since the Michigan Penal Code was enacted in 1931. In the ensuing years, the effect of inflation alone has caused offenses that once would have been considered misdemeanors to become felonies. For some time, many have been urging that the misdemeanor/felony threshold be raised, and that the penalties applicable to various types of larceny be standardized.

Although some have advocated raising the felony threshold, merchants have been concerned that doing so could lessen the deterrent effect of penalties for larceny offenses, retail fraud, and bad check violations. Consequently, some people believe that any increase in the felony threshold should be accompanied by increased penalties for repeat offenders and larger value amounts, as well as tougher civil penalties for passing bad checks.

### **CONTENT**

**House Bills 4197 (S-3) and 4198 (S-3) would amend the Michigan Penal Code to revise the**

**felony threshold level and increase the penalties for various larceny and bad check offenses. House Bill 4197 (S-3) also would create the misdemeanor of third-degree retail fraud and increase the threshold and penalties for the felony of first-degree retail fraud and second-degree retail fraud.**

**House Bill 4199 (S-2) would amend the Revised Judicature Act (RJA) to require the payment of specific fees and charges for checks written on insufficient funds or no account. The bill also would revise a provision of the RJA concerning the recovery of damages and costs by a merchant who was a victim of retail fraud.**

The bills are tie-barred and would take effect on April 1, 1996.

### **House Bill 4197 (S-3)**

#### **Larceny Offenses**

Under the bill, the various offenses would be punishable by graduated maximum penalties, depending on the value of the property involved in the offense and the number of prior convictions. Values of property stolen in separate incidents pursuant to a scheme or course of conduct within one year could be aggregated to determine the total value of property stolen.

The offense would be a felony punishable by up to 10 years' imprisonment and/or a maximum fine of three times the value, if the value were \$20,000 or more; if the value were less than \$200 and the

person had three or more prior convictions; if the value were \$200 or more, but less than \$1,000, and the person had two or more prior convictions; or if the value were \$1,000 or more, but less than \$20,000, and the person had one prior conviction. The offense would be a felony punishable by up to five years and/or \$10,000 or three times the value, whichever was greater, if the value were \$1,000 or more, but less than \$20,000; if the value were less than \$200 and the person had two prior convictions; or if the value were \$200 or more, but less than \$1,000, and the person had one prior conviction.

The offense would be a misdemeanor punishable by up to one year and/or \$2,000 or three times the value, whichever was greater, if the value were \$200 or more, but less than \$1,000, or if the value were less than \$200 and the person had one prior conviction. The offense would be a misdemeanor punishable by up to 93 days' imprisonment and/or a maximum fine of \$500 or three times the value, whichever was greater, if the value were less than \$200.

The offenses to which the bill would apply are: simple larceny; larceny from a vehicle; larceny of a rented vehicle; various malicious destruction of property offenses, including the destruction of personal property, a house, barn, or building, and memorial markers; and dealing in stolen property.

The current misdemeanor/felony threshold for simple larceny is \$100; the felony is punishable by up to five years' imprisonment and/or a maximum fine of \$2,500.

The theft or unlawful removal or taking of any wheel, tire, radio, heater, or clock in or on any motor vehicle, house trailer, trailer, or semi-trailer is a felony punishable by up to five years' imprisonment and/or a maximum fine of \$10,000. Entering or breaking into a motor vehicle, house trailer, trailer, or semi-trailer for the purpose of stealing or unlawfully removing any property valued at \$5 or more is a felony punishable by up to five years' imprisonment or a maximum fine of \$1,000. The current felony threshold for refusal or willful neglect to return a rented or leased motor vehicle, trailer, or other tangible property pursuant to a written agreement providing for its return is \$100; the felony is punishable by up to two years' imprisonment and/or a maximum fine of \$1,000.

The felony threshold for willful and malicious destruction of another's personal property, and for malicious destruction of a house, barn, or other

building of another, is \$100. (The Code does not specify a penalty for either offense.) The threshold for the willful destruction, mutilation, defacing, removal of, or injury to any tomb, monument, gravestone, or other structure or thing placed for a memorial is \$100; the felony offense is punishable by up to five years' imprisonment and/or a maximum fine of \$2,500.

The felony threshold for buying, receiving, possessing, concealing, or aiding the concealment of stolen, embezzled, or converted money, goods, or property is \$100; the felony offense is punishable by up to five years' imprisonment and/or a maximum fine of \$2,500.

### Retail Fraud

Under the Code, the felony of first-degree retail fraud involves property or money valued at over \$100 and the misdemeanor of second-degree retail fraud involves property or money valued at \$100 or less. Under the bill, the felony of first-degree retail fraud would involve property or money valued at \$1,000 or more; the misdemeanor of second-degree retail fraud would apply if the value were \$200 or more, but less than \$1,000; and the new misdemeanor of third-degree retail fraud would apply if the value were less than \$200.

First-degree retail fraud would be punishable by up to five years' imprisonment (rather than two years) and/or a maximum fine of \$10,000 or three times the value, whichever was greater (rather than a fine of up to \$1,000). Second-degree retail fraud would be punishable by up to one year's imprisonment (rather than 93 days) and/or a maximum fine of \$2,000 or three times the value, whichever was greater (rather than a fine of up to \$100). Third-degree retail fraud would be punishable by up to 93 days' imprisonment and/or a maximum fine of \$500 or three times the value, whichever was greater.

Values of property stolen or unlawfully removed in separate incidents pursuant to a scheme or course of conduct within one year could be aggregated to determine the total value of property stolen or unlawfully removed.

In addition, under the Code, a person who commits second-degree retail fraud and who has one or more prior convictions for retail fraud, simple larceny, larceny from a building, or securing land, personal property, or any thing of value by false pretenses, with intent to defraud or cheat, is

guilty of first-degree retail fraud. Under the bill, a person who committed third-degree retail fraud and who had a prior conviction for any of those offenses would be guilty of second-degree retail fraud, and a person who had two or more prior convictions for any of those offenses would be guilty of first-degree retail fraud.

#### Enhanced Sentences

If a prosecuting attorney intended to seek an enhanced sentence under the bill based on the defendant's having a prior conviction, the prosecuting attorney would have to include on the complaint and information a statement listing the prior conviction. The existence of a prior conviction would have to be determined by the court, without a jury, at sentencing, and could be established by any evidence relevant for that purpose, including, but not limited to, one or more of the following:

- A copy of the judgment of conviction.
- A transcript of a prior trial, plea-taking, or sentencing.
- Information contained in a presentence report.
- The defendant's statement.

#### **House Bill 4198 (S-3)**

Under the bill, the various offenses would be punishable by graduated maximum penalties, depending on the value of the property involved in the offense and the number of prior convictions. Values of property stolen in separate incidents pursuant to a scheme or course of conduct within one year could be aggregated to determine the total value of property stolen.

#### Bad Checks

The Code prohibits the making, drawing, uttering, or delivering of a check, draft, or order, with intent to defraud, without sufficient funds in or credit with the bank or other depository to cover the payment. If the amount payable is \$50 or less, a first offense is a misdemeanor punishable by up to 93 days' imprisonment and/or a maximum fine of \$100; a second offense, charged as a second offense, is a misdemeanor punishable by up to six months' imprisonment and/or a maximum fine of \$250; a third offense, charged as a third offense, is a misdemeanor punishable by up to one year's imprisonment and/or a maximum fine of \$500; and a fourth or subsequent offense, charged as a

fourth or subsequent offense, is a felony punishable by up to 13 months' imprisonment and/or a maximum fine of \$500. If the amount payable is more than \$50, but less than \$200, a first or second offense is a misdemeanor punishable by up to one year's imprisonment and/or a maximum fine of \$500, and third or subsequent offense, charged as a third or subsequent offense, is a felony punishable by up to 13 months' imprisonment and/or a maximum fine of \$500. If the amount payable is \$200 or more, the offense is a felony punishable by up to 13 months' imprisonment and/or a maximum fine of \$500.

Under the bill, if the amount payable were less than \$100, a first offense would be a misdemeanor punishable by up to 93 days' imprisonment and/or a maximum fine of \$500; a second offense would be a misdemeanor punishable by up to one year's imprisonment and/or a maximum fine of \$1,000; and a third or subsequent offense, charged as a third or subsequent offense, would be a felony punishable by up to 13 months' imprisonment and/or a maximum fine of \$2,000. If the amount payable were \$100 or more, but less than \$500, a first or second offense would be a misdemeanor punishable by up to one year's imprisonment, and/or a maximum fine of \$1,000 or three times the amount payable, whichever was greater, and a third or subsequent offense, charged as a third or subsequent offense, would be a felony punishable by up to 13 months' imprisonment and/or a maximum fine of \$2,000. If the amount payable were \$500 or more, the offense would be a felony punishable by up to 13 months' imprisonment and/or a maximum fine of \$2,000 or three times the amount payable, whichever was greater.

#### Larceny Offenses

The offense would be a felony punishable by up to 10 years' imprisonment and/or a maximum fine of three times the value, if the value were \$20,000 or more; if the value were less than \$200 and the person had three or more prior convictions; if the value were \$200 or more, but less than \$1,000, and the person had two or more prior convictions; or if the value were \$1,000 or more, but less than \$20,000, and the person had one prior conviction. The offense would be a felony punishable by up to five years and/or \$10,000 or three times the value, whichever was greater, if the value were \$1,000 or more, but less than \$20,000; if the value were less than \$200 and the person had two prior

convictions; or if the value were \$200 or more, but less than \$1,000, and the person had one prior conviction.

The offense would be a misdemeanor punishable by up to one year and/or \$2,000 or three times the value, whichever was greater, if the value were 200 or more, but less than \$1,000, or if the value were less than \$200 and the person had one prior conviction. The offense would be a misdemeanor punishable by up to 93 days' imprisonment and/or a maximum fine of \$500 or three times the value, whichever was greater, if the value were less than \$200.

The offenses to which the bill would apply are: fraudulent use of a financial transaction device; various embezzlement offenses; securing land, personal property, or any thing of value by false pretenses, with intent to defraud or cheat; and use of false telephone credit.

The felony threshold for knowingly using a canceled or revoked financial transaction device to obtain goods, property, services, or anything of value, with intent to defraud, is \$100; the felony offense is punishable by up to one year's imprisonment and/or a maximum fine of \$1,000. The threshold for knowingly using a financial transaction device, with intent to defraud, to withdraw or transfer funds from a deposit account in violation of contractual limitations imposed on the amount or frequency of withdrawals or transfers, or in excess of the funds on deposit in the account is \$500. (The Code does not specify a penalty.)

For embezzlement by an agent, servant or employee, or trustee, bailee, or custodian of another or of any partnership, voluntary association, public or private corporation, the State, or any political subdivision of the State, the felony threshold is \$100; the felony offense is punishable by up to 10 years' imprisonment and/or a maximum fine of \$5,000. For embezzlement, fraudulent removal, concealment or disposal of any personal property held subject to any chattel mortgage, lease, or unfulfilled contract to purchase, with intent to injure or defraud, the felony threshold is \$100; the felony is punishable by up to two years' imprisonment or a maximum fine of \$1,000. For embezzling or fraudulently disposing of or converting jointly owned property for one party's use without the consent of the other part owner, the felony threshold is \$100; the felony offense is punishable by up to 10 years' imprisonment and/or a maximum fine of \$5,000.

For securing land, personal property, or use of any valuable thing, with intent to defraud or cheat, by color of any false token or writing, bogus check, printed or engraved instrument, spurious coin, or any other false pretense, the felony threshold is \$100; the felony offense is punishable by up to 10 years' imprisonment and/or a maximum fine of \$5,000.

The felony threshold for knowingly obtaining or attempting to obtain telephone services by the use of any false or fictitious telephone credit number or use of another's telephone number without authority is \$100. (The Code does not specify a penalty.)

### Enhanced Sentences

If a prosecuting attorney intended to seek an enhanced sentence under the bill based on the defendant's having a prior conviction, the prosecuting attorney would have to include on the complaint and information a statement listing the prior conviction. The existence of a prior conviction would have to be determined by the court, without a jury, at sentencing, and could be established by any evidence relevant for that purpose, including, but not limited to, one or more of the following:

- A copy of the judgment of conviction.
- A transcript of a prior trial, plea-taking, or sentencing.
- Information contained in a presentence report.
- The defendant's statement.

### House Bill 4199 (S-2)

#### Bad Checks

Under the RJA, if the maker of a bad check fails to make payment within 30 days after receiving a written demand for payment, he or she is liable for damages of double the amount owed. Damages cannot be less than \$50 or more than \$500, but if the amount of the check is over \$500, the maker is liable for the amount of the check. Under the bill, the maker of a bad check would have to pay either of the following:

- Within 14 days, the amount plus actual bank charges incurred by the payee, the cost of mailing the demand for payment, and a \$5 processing fee.
- Within 30 days, the amount owed, plus bank charges, mailing costs, a \$5 processing fee,

and civil damages of \$25 or 4% of the dishonored check, whichever was greater.

If a person failed to make either of those payments, he or she would be liable for all those charges, plus additional damages of 50% of the bad check or \$200, whichever was greater, and reasonable costs, including attorney fees, approved by the court. The additional damages would not apply if, before an action for payment the maker paid the amount of the bad check plus bank charges, mailing costs, a \$5 processing fee, and civil damages of \$25 or 4% of the bad check, plus reasonable costs agreed to by the parties that did not exceed \$250.

### Retail Fraud

Currently, a person who commits retail fraud is liable to the victim merchant for the full retail price of unrecovered property or recovered property not in salable condition, and a civil penalty of 10 times the retail price of the property, but not less than \$40 or more than \$100. The bill would change those limits to not less than \$50 or more than \$200. In addition, a person who commits retail fraud and fails to comply with a written demand for payment of the full retail price plus the penalty is liable for the full retail price, unless the property is recovered in salable condition, plus a civil penalty of \$200 and reasonable costs up to \$50. Under the bill, the offender would be liable for 10 times the retail price, but not less than \$50 or more than \$200, and costs, including reasonable attorney fees. The RJA also allows a merchant to recover damages from a parent of an unemancipated minor who lives with his or her parent and who commits retail fraud. The bill specifies that damages recovered from a parent could not exceed \$5,000.

MCL 750.356 et al. (H.B. 4197)  
750.131 et al. (H.B. 4198)  
600.2952 & 600.2953 (H.B. 4199)

### SENATE COMMITTEE ACTION

As passed by the House, House Bills 4197 and 4198 included enhanced penalty provisions for some violations by offenders with prior convictions. The Senate Judiciary Committee adopted substitutes (S-3) to those bills that include parallel provisions for all of the larceny offenses regarding prior convictions and enhanced penalties.

The House-passed version of House Bill 4199 provided that, if the maker of a bad check did not

make payment for the amount of the check and a \$25 processing fee within 30 days after receiving a written demand for payment from the payee, the maker would be liable to the payee, in addition to the amount of the check, draft, or order, for damages of *either* two times the amount of the bad check or \$100, whichever was greater, *and* costs of \$250. The Senate Judiciary Committee adopted a substitute (S-2) to House Bill 4199 that provides, instead, that the maker would have to pay either, within 14 days, the amount plus actual bank charges incurred by the payee, the cost of mailing the demand for payment, and a \$5 processing fee, or, within 30 days, the amount owed, plus bank charges, mailing costs, a \$5 processing fee, and civil damages of \$25 or 4% of the dishonored check, whichever was greater. If a person failed to make either of those payments, he or she would be liable for all those charges, plus additional damages of 50% of the bad check or \$200, whichever was greater, and reasonable costs, including attorney fees, approved by the court.

### 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

The bills would update and standardize criminal sanctions for theft and improve civil remedies for victims of retail fraud and bad checks. By increasing the dollar amount of the misdemeanor/felony threshold for various larceny offenses, the bills would address the changes that have occurred in the prosecution of those offenses due to normal inflationary increases over the last 39 years. If this measure were to be taken, however, then merchants, who are victimized by shoplifters and bad check passers, need improvements in civil remedy procedures. The bills would accomplish these dual goals.

With regard to criminal prosecutions, the bills would raise the felony threshold and institute a four-tier penalty structure that would offer stiffer penalties for the most egregious offenses, and allow strong misdemeanor penalties for some offenses that currently may be prosecuted as felonies. Also, by making even the lesser misdemeanor offenses 93-day misdemeanors, the bills would ensure that those offenders were fingerprinted and their criminal records maintained. The bills thus would enable repeat violators to be more easily identified. In addition, House Bill 4199

(S-2) would allow victims of bad check and retail fraud offenses to collect additional amounts when they pursued civil remedies, thereby discouraging potential offenders.

### **Opposing Argument**

House Bill 4197 originally included a section of the Penal Code that prohibits the theft of utility service. The felony threshold for this offense should be increased along with the other larceny offenses, and the bill's four-tiered penalty structure should be implemented for the utility service violation. One of the main aims of the legislation is to provide a consistent and reasonable penalty structure for larceny offenses. To the extent that the utility service offense is excluded from the bill, this aim is thwarted.

**Response:** The utility offense already carries a threshold of \$500, which is more reasonable than the felony thresholds for the offenses included in the bills. Utility companies reportedly have expressed a concern that raising the threshold to \$1,000 actually could encourage the theft of service up to that amount.

Legislative Analyst: P. Affholter

### **FISCAL IMPACT**

The bills would likely result in cost savings to the State and could increase costs for local units of government.

In 1994, the Department of Corrections received a total of 1,181 offenders for violations of the

sections of law being amended by the bills. No aggregate data are available, however, on the dollar value of the property that led to each commitment. If one assumes that approximately 10% of these commitments were the result of crimes involving values less than the new felony threshold (generally \$1,000) and therefore would not receive prison sentences under the bills, then annual commitments would be reduced by about 118, at a saving of approximately \$1.8 million (assuming an average of one-year actual time served). If that figure were more like 30%, then the reduction in annual commitments would be closer to 354, with a corresponding saving of \$5.3 million. The increase in fines proposed in the bills also could provide judges with other nonprison sentencing options that in turn could reduce prison commitments. If these offenders, however, were convicted of misdemeanors instead of felonies, then there could be increased costs incurred by local units of government for providing sanctions (jail, community services, etc.) at the local level.

The bills also would increase maximum sentences for crimes generally concerning property over \$20,000. To the extent that this change resulted in an increase in sentence lengths, then costs could increase. There is no reliable way to estimate, however, how many offenders are involved in crimes involving a value greater than \$20,000, and the increased sentence lengths that judges might impose, as a result of this infraction.

Fiscal Analyst: M. Hansen

### **1994 Prison Commitments for Crimes in House Bills 4197 to 4199**

750.131	Writing Bad Checks.....	15
750.174	Embezzlement over \$100.....	59
750.218	False Pretenses over \$100.....	70
750.219a	Obtaining services by false telephone number.....	1
750.356	Larceny over \$100.....	100
750.356a	Larceny from a motor vehicle.....	121
750.356c	Retail Fraud - first degree.....	443
750.356d	Retail Fraud - second degree.....	2
750.362a	Failure to return rented property over \$100.....	3
750.377a	Malicious destruction of property over \$100.....	41
750.380	Malicious destruction of building over \$100.....	31
750.387	Malicious destruction of tombs/memorials.....	1
750.535	Receiving and concealing stolen property over \$100.....	294
<b>TOTAL:.....</b>		<b>1,181</b>

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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.