



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL



ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986

House Bills 4197, 4198, and 4199

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: 11-6-95

SUMMARY OF HOUSE BILLS 4197, 4198, and 4199 as passed by the House:

House Bills 4197 and 4198 would amend the Michigan Penal Code to revise the felony threshold level and increase the penalties for various larceny offenses. House Bill 4197 also would create the misdemeanor of third-degree retail fraud. House Bill 4199 would amend the Revised Judicature Act (RJA) to require the payment of a \$25 processing fee for checks written on insufficient funds or no account, increase the amount of damages due for nonpayment, and revise provisions pertaining to the recovery of damages and costs by a merchant who was a victim of retail fraud.

The bills include an October 1, 1995, effective date and are tie-barred.

House Bill 4197

Simple Larceny

The Code prohibits the stealing from the property of another person, any money, goods, or chattels; any bank note, bank bill, bond, promissory note, due bill, bill of exchange or other bill, draft, order or certificate; any book of accounts for or concerning money or goods due or to become due, or to be delivered; any deed or writing containing a conveyance of land or any other valuable contract in force; any receipt, release or defeasance; or any writ, process, or public record. If the value of the property stolen exceeds \$100, the offense is a felony punishable by up to five years' imprisonment and/or a maximum fine of \$2,500. If the value is \$100 or less, the offense is a misdemeanor.

Under the bill, if the property stolen had a value of \$20,000 or more, the offense would be a felony punishable by up to 10 years' imprisonment and/or a maximum fine of three times the value of the property. If the value were \$1,000 or more, but less than \$20,000, the offense would be a felony punishable by up to five years' imprisonment and/or a maximum fine of \$10,000 or three times the value of the property, whichever was greater. If the property had a value of \$200 or more, but less than \$1,000, the offense would be a misdemeanor punishable by up to one year's imprisonment and/or a maximum fine of \$2,000 or three times the value of the stolen property, whichever was greater. If the value were less than \$200, 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 of the stolen property, whichever was greater.

Larceny from a Vehicle

The Code prohibits 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. The offense is a felony punishable by up to five years' imprisonment or a maximum fine of \$1,000. Under the bill, the felony would be punishable by up to five years' imprisonment and/or a maximum fine of \$10,000.

The Code also prohibits a person from entering or breaking into a motor vehicle, house trailer, trailer or semi-trailer, for the purpose of stealing or unlawfully removing any goods, chattels, or

property valued at \$5 or more. The offense, which applies regardless of the value of the property if the offender breaks, tears, cuts, or otherwise damages any part of the vehicle, is a felony punishable by up to five years' imprisonment or a maximum fine of \$1,000. The bill would delete the \$5 threshold.

Under the bill, if the value of the property were less than \$200, 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 of the property, whichever was greater. The offense would be a misdemeanor punishable by up to one year's imprisonment and/or a maximum fine \$2,000 or three times the value of the property, whichever was greater, if the value of the property were \$200 or more, but less than \$1,000, or the value were less than \$200 and the offender had a prior conviction of the 93-day misdemeanor. The offense would be a felony punishable by up to five years' imprisonment and/or a maximum fine of \$10,000 or three times the value of the property, whichever was greater, if the value of the property were \$1,000 or more, but less than \$20,000; the value were less than \$200 and the offender had two or more prior convictions of the 93-day misdemeanor; or the value were \$200 or more, but less than \$1,000 and the offender had a prior conviction of the one-year misdemeanor. If the value were \$20,000 or more, the offense would be a felony punishable by up to 10 years' imprisonment and/or a maximum fine of three times the value of the property.

A misdemeanor violation in which the offender tore, broke, cut, or otherwise damaged any part of the vehicle would be a felony, regardless of the value of the property, punishable by up to five years' imprisonment and/or a maximum fine of \$10,000.

Larceny of a Rented Vehicle

The Code prohibits the 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. If the value of the vehicle, trailer, or other tangible property exceeds \$100, the larceny offense is a felony punishable by up to two years' imprisonment and/or a maximum fine of \$1,000. If the vehicle, trailer, or other property is valued at \$100 or less, the offense is a misdemeanor.

Under the bill, if the vehicle, trailer, or other property had a value of less than \$200, 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. The offense would be a misdemeanor punishable by up to one year's imprisonment and/or a maximum fine of three times the value of the vehicle, trailer, or other property, whichever was greater, if the value were \$200 or more, but less than \$1,000, or the value were less than \$200 and the offender had a prior conviction of the 93-day misdemeanor. The offense would be a felony punishable by up to five years' imprisonment and/or a maximum fine of \$10,000 or three times the value of the vehicle, trailer, or other property, whichever was greater, if the value were \$1,000 or more, but less than \$20,000; the value were less than \$200 and the offender had two or more convictions of the 93-day misdemeanor; or the value were \$200 or more, but less than \$1,000, and the offender had a prior conviction of the one-year misdemeanor. If the value of the vehicle, trailer, or property were \$20,000 or more, the offense would be a felony punishable by up to 10 years' imprisonment and/or a maximum fine of three times the value of the vehicle, trailer, or other property.

Malicious Destruction of Property

Personal Property. The Code prohibits the willful and malicious destruction or injury of another's personal property. If the resulting damage exceeds \$100, the offense is a felony. If the damage is \$100 or less, the offense is a misdemeanor.

Under the bill, if the amount of the destruction or injury were \$20,000 or more, the offense would be a felony punishable by up to 10 years' imprisonment and/or a maximum fine of three times the amount of the destruction or injury. If the amount of the destruction or injury were \$1,000 or more, but less than \$20,000, the offense would be a felony punishable by up to five years' imprisonment and/or a maximum fine of \$10,000 or three times the amount of destruction or injury, whichever was greater. If the amount of the destruction or injury were \$200 or more, but less than \$1,000, the offense would be a misdemeanor punishable by up to one year's imprisonment and/or a maximum fine of \$2,000 or three times the amount of the destruction or injury, whichever

was greater. If the amount of the destruction or injury were less than \$200, the offense would be a misdemeanor punishable by up to 93 days' imprisonment and/or a maximum fine of \$500 or three times the amount of the destruction or injury, whichever was greater.

The bill also provides that amounts of destruction or injury could be aggregated in determining the total amount of the destruction or injury.

House, Barn, or Building. Malicious destruction of any house, barn, or other building of another is a felony if the resulting damage exceeds \$100. If the damage is \$100 or less, the offense is a misdemeanor.

Under the bill, the felony thresholds and penalties for malicious destruction of personal property also would apply to malicious destruction of a house, barn, or building belonging to another.

Memorial Markers. The Code prohibits the willful destruction, mutilation, defacing, removal of, or injury to any tomb, monument, gravestone, or other structure or thing placed for a memorial of the dead. The offense is a felony punishable by up to five years' imprisonment and/or a maximum fine of \$2,500 if the damage caused exceeds \$100 or the destruction is directed against two or more separate burial rights or places.

Under the bill, the felony thresholds and penalties for malicious destruction of personal property also would apply to malicious destruction of memorial markers. Amounts of destruction or injury could be aggregated in determining the total amount of the destruction or injury.

Dealing in Stolen Property

The Code prohibits a person from buying, receiving, possessing, concealing, or aiding the concealment of stolen, embezzled, or converted money, goods, or property knowing the money, goods, or property to be stolen, embezzled, or converted. If the property exceeds the value of \$100, the offense is a felony punishable by up to five years' imprisonment and/or a maximum fine of \$2,500.

Under the bill, if the property's value were \$20,000 or more, the offense would be a felony punishable by up to 10 years' imprisonment and/or a maximum fine of three times the value of the property, whichever was greater. If the property's value were \$1,000 or more, but less than \$20,000,

the offense would be a felony punishable by up to five years' imprisonment and/or a maximum fine of \$10,000 or three times the value of the property, whichever was greater. If the property had a value of \$200 or more, but less than \$1,000, the offense would be a misdemeanor punishable by up to one year's imprisonment and/or a maximum fine of \$2,000 or three times the value of the property, whichever was greater. If the property had a value of less than \$200, 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 of the property, whichever was greater.

The Code also provides that a third or subsequent conviction of dealing in stolen property is a felony punishable by up to five years' imprisonment and/or a fine of \$2,500. The bill would apply this provision to a third or subsequent conviction at the misdemeanor levels and increase the fine amount to \$10,000 or three times the value of the property, whichever was greater.

Retail Fraud

The bill would revise the felony threshold for retail fraud offenses, establish new penalties for retail fraud offenses, and create the misdemeanor offense of third-degree retail fraud. Currently, first-degree retail fraud is a felony and second-degree retail fraud is a misdemeanor. Under the bill, first-degree retail fraud would continue to be a felony, while second- and third-degree retail fraud would be misdemeanor offenses.

First-Degree Retail Fraud. Under the Code, a person who does any of the following in a store or in its immediate vicinity is guilty of first-degree retail fraud, which is punishable by up to two years' imprisonment and/or a maximum fine of \$1,000:

- While a store is open to the public, alters, transfers, removes and replaces, conceals, or otherwise misrepresents the price at which property is offered for sale, with the intent not to pay for the property or to pay less than the price at which the property is offered for sale, if the resulting difference in price is more than \$100.
- While a store is open to the public, steals property of the store that is offered at a price of more than \$100.
- With the intent to defraud, obtains or attempts to obtain money or property from the store as a refund or exchange for property that was not paid for and belongs

to the store, if the amount of money or the value of the property obtained or attempted to be obtained is \$100 or more.

- Commits second-degree retail fraud and has one or more prior convictions for retail fraud or various larceny offenses.

Under the bill, the value threshold for first-degree retail fraud would be \$1,000 rather than \$100 and the penalty would be up to five years' imprisonment and/or a maximum fine of \$10,000 or three times the value of the difference in price, property stolen, or money or property obtained or attempted to be obtained, whichever was greater. In addition, a third-degree retail fraud offense would be considered first-degree retail fraud if the offender had two or more prior convictions for committing or attempting to commit third-degree retail fraud.

Second-Degree Retail Fraud. Under the Code, a person who does any of the following in a store or in its immediate vicinity is guilty of second-degree retail fraud, which is punishable by up to 93 days' imprisonment and/or a maximum fine of \$100:

- While a store is open to the public, alters, transfers, removes and replaces, conceals, or otherwise misrepresents the price at which property is offered for sale, with the intent not to pay for the property or to pay less than the price at which the property is offered for sale.
- While a store is open to the public, steals property of the store that is offered for sale.
- With the intent to defraud, obtains or attempts to obtain money or property from the store as a refund or exchange for property that was not paid for and belongs to the store.

Under the bill, second-degree retail fraud would apply if the value of the difference in price, property stolen, or money or property obtained or attempted to be obtained were \$200 or more, but less than \$1,000. The penalty for second-degree retail fraud would be up to one year's imprisonment and/or a maximum fine of \$2,000 or three times the value of the difference in price, property stolen, or money or property obtained or attempted to be obtained. In addition, a third-degree retail fraud offense would be considered second-degree retail fraud if the offender had a prior conviction for committing or attempting to commit third-degree retail fraud.

Third-Degree Retail Fraud. A person who did any of the following in a store or in its immediate vicinity would be guilty of third-degree retail fraud:

- While a store was open to the public, altered, transferred, removed and replaced, concealed, or otherwise misrepresented the price at which property was offered for sale, with the intent not to pay for the property or to pay less than the price at which the property was offered for sale, if the resulting difference in price were less than \$200.
- While a store was open to the public, stole property of the store that was offered for sale at a price of less than \$200.
- With the intent to defraud, obtained or attempted to obtain money or property from the store as a refund or exchange for property that was not paid for and belonged to the store, if the amount of money or the value of the property obtained or attempted to be obtained were less than \$200.

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 of the difference in price, property stolen, or money or property obtained or attempted to be obtained, whichever was greater.

Enhanced Penalty

If a prosecuting attorney intended to seek an enhanced penalty for a second misdemeanor offense for larceny from a vehicle or a rented vehicle involving less than \$200, or for third-degree retail fraud punishable as a first- or second-degree offense, he or she would have to include on the complaint and information a statement listing the prior conviction(s). The existence of the defendant's prior conviction would have to be determined by the court, without a jury, at sentencing. The existence of a prior conviction could be established by any evidence relevant for that purpose, including 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

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.

Fraudulent Use of a Financial Transaction Device

Canceled or Revoked Device. The Code prohibits the knowing use of a canceled or revoked financial transaction device for the purpose of obtaining goods, property, services, or anything of value, with intent to defraud. The offense is a misdemeanor if the aggregate value of the goods, property, services, or thing of value is \$100 or less, and is a felony, punishable by up to one year's

imprisonment and/or a maximum fine of \$1,000 if the aggregate value is more than \$100.

Under the bill, if the aggregate value 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 aggregate value 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 aggregate value, 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 aggregate value 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 aggregate value, whichever was greater.

Violations of Amount or Frequency Limits. The Code prohibits the knowing use of a financial transaction device, with intent to defraud, to withdraw or transfer funds from a deposit account in violation of the contractual limitations imposed on the amount or frequency of withdrawals or transfers, or in excess of the funds then on deposit in the account. The offense is a misdemeanor if the amount of the funds withdrawn or transferred is \$500 or less, and is a felony if the amount is more than \$500.

Under the bill, the offense would be a misdemeanor punishable by up to 93 days' imprisonment and/or a maximum fine of \$500 or three times the amount withdrawn or transferred, whichever was greater, if the amount were less than \$200. It would be a misdemeanor, punishable by up to one year's imprisonment and/or a maximum fine of \$2,000 or three times the amount withdrawn or transferred, whichever was greater, if the amount of the funds were \$200 or more but less than \$1,000, or the amount were less than \$200 and the offender had a prior conviction of the 93-day misdemeanor. The offense would be a felony punishable by up to five years' imprisonment and/or a maximum fine of \$10,000 or three times the amount of the funds withdrawn or transferred, whichever was greater, if the amount of the funds were \$1,000 or more but less than \$20,000; the amount were less than

\$200 and the offender had two or more prior convictions of the 93-day misdemeanor; or the amount were \$200 or more but less than \$1,000 and the offender had a prior conviction of the one-year misdemeanor. The offense would be a felony punishable by up to 10 years' imprisonment and/or a fine of three times the amount withdrawn or transferred, if the amount of the funds were \$20,000 or more.

Embezzlement

Agent, Servant or Employee, or Trustee, Bailee, or Custodian. The Code prohibits 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 offense is a misdemeanor if the value of the property or money is \$100 or less. If the value is more than \$100, the offense is a felony punishable by up to 10 years' imprisonment and/or a maximum fine of \$5,000.

Under the bill, if the money or property embezzled had a value of less than \$200, 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 of the money or property, whichever was greater. If the money or property had a value of \$200 or more, but less than \$1,000, the offense would be a misdemeanor punishable by up to one year's imprisonment and/or a maximum fine of \$2,000 or three times the value of the money or property, whichever was greater. If the money or property had a value of \$1,000 or more, but less than \$20,000, the offense would be a felony punishable by up to five years' imprisonment and/or a maximum fine of \$10,000 or three times the value of the money or property, whichever was greater. If the money or property had a value of \$20,000 or more, the offense would be a felony punishable by up to 10 years' imprisonment and/or a maximum fine of three times the value of the money or property.

Chattel Mortgagor, Vendee, or Lessee. The Code prohibits the 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 mortgagee, lessor, or vendor. If the property has a value of more than \$100, the offense is a felony punishable by up to two years' imprisonment or a maximum fine of \$1,000. If the property has a value of \$100 or less, the offense is a misdemeanor. The penalties are the same

whether the property is embezzled by the person holding it or by another.

Under the bill, if the property had a value of \$20,000 or more, the offense would be a felony punishable by up to 10 years' imprisonment and/or a maximum fine of three times the value of the property. If the property had a value of \$1,000 or more, but less than \$20,000, the offense would be a felony punishable by up to five years' imprisonment and/or a maximum fine of \$10,000 or three times the value of the property, whichever was greater. If the property had a value of \$200 or more, but less than \$1,000, the offense would be a misdemeanor punishable by up to one year's imprisonment and/or a maximum fine of \$2,000 or three times the value of the property, whichever was greater. If the property had a value of less than \$200, 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 of the property, whichever was greater. As under current law, the penalties would be the same whether the property was embezzled by the person holding it or by another.

Joint Property. The Code prohibits an agent, servant, employee, trustee, bailee, custodian, attorney, collector, or other person who receives or collects money or other personal property that partly belongs to him or her and partly is the property of another person from embezzling or fraudulently disposing of or converting the property to his or her own use without the consent of the other part owner. If the money or person property has a value of \$100 or less, the offense is a misdemeanor. If the value is more than \$100, the offense is a felony punishable by up to 10 years' imprisonment and/or a maximum fine of \$5,000.

Under the bill, if the money or personal property had a value of less than \$200, 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 of the money or property, whichever was greater. If the value were \$200 or more, but less than \$1,000, the offense would be a misdemeanor punishable by up to one year's imprisonment and/or a maximum fine of \$2,000 or three times the value of the money or property, whichever was greater. If the value were \$1,000 or more, but less than \$20,000, the offense would be a felony punishable by up to five years' imprisonment and/or a maximum fine of \$10,000 or three times the value of the money or property, whichever was greater. If the value were \$20,000 or more, the offense would be a felony punishable

by up to 10 years' imprisonment and/or a maximum fine of three times the value of the money or property.

False Pretenses

The Code prohibits a person from securing any land or interest in 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 including false weights and measures. If the value involved is \$100 or less, the offense is a misdemeanor. If the value is more than \$100, the offense is a felony punishable by up to 10 years' imprisonment and/or a maximum fine of \$5,000.

Under the bill, if the value were less than \$200, 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 \$200 or more, but less than \$1,000, the offense would be a misdemeanor punishable by up to one year's imprisonment and/or a maximum fine of \$2,000 or three times the value, whichever was greater. If the value were \$1,000 or more, but less than \$20,000, the offense would be a felony punishable by up to five years' imprisonment and/or a maximum fine of \$10,000 or three times the value, whichever was greater. If the value were \$20,000 or more, the offense would be a felony punishable by up to 10 years' imprisonment and/or a maximum fine of three times the value.

Use of False Telephone Credit

The Code prohibits a person from 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 to do so. The offense is a misdemeanor unless the total value of telephone services obtained exceeds \$100.

Under the bill, if the total value of the telephone services obtained or attempted to be obtained were less than \$200, 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. The offense would be a misdemeanor punishable by up to one year's imprisonment and/or a maximum fine of \$2,000 or three times the value of the services, whichever was greater, if the total value of the telephone services were \$200 or more, but less than \$1,000, or the value were less than \$200 and the offender had a prior conviction of the 93-day misdemeanor. The offense would be a felony

punishable by up to five years' imprisonment and/or a maximum fine of \$10,000 or three times the value of the services, whichever was greater, if the total value of telephone services were \$1,000 or more, but less than \$20,000; the value were less than \$200 and the offender had two or more prior convictions of the 93-day misdemeanor; or the value were \$200 or more, but less than \$1,000, and the offender had a prior conviction of the one-year misdemeanor. If the total value of telephone services were \$20,000 or more, the offense would be a felony punishable by up to 10 years' imprisonment and/or a maximum fine of three times the value of the services.

Enhanced Penalty

If a prosecuting attorney intended to seek an enhanced penalty for a second misdemeanor offense for a bad check involving less than \$100, for use of a canceled or revoked financial transaction device involving under \$100, for use of a device in violation of contractual limits involving \$500 or less, or for use of false telephone credit to obtain services valued at less than \$200, the prosecutor would have to include on the complaint and information a statement listing the prior conviction. The existence of the defendant's prior conviction would have to be determined by the court, without a jury, at sentencing. The existence of a prior conviction could be established by any evidence relevant for that purpose, including 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

Bad Checks

The bill would require a \$25 processing fee to be paid, exclusive of any penal action, by a person who made, drew, uttered, or delivered a check, draft, or order for the payment of money upon a bank or other depository, or a person, firm, or corporation, that refused to honor the check, draft, or order for lack of funds or credit to pay or because the maker had no account with the drawee.

Under the RJA, if the maker of a bad check fails to make payment within 30 days after receiving a written demand for payment from the payee, the maker is liable to the payee, including the amount of the check, draft, or order, for damages of

double the amount of the check, draft, or order. Damages cannot be less than \$50 or more than \$500, "unless justice would not be served by an award of double damages and would be served by an award of a lesser amount". If the amount of the check is over \$500, the maker is liable only for the amount of the check.

The bill, instead, provides 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. A written demand for payment of the amount of a bad check and a \$25 processing fee would have to notify the maker of the bad check of his or her liability for failure to pay within 30 days.

The RJA also provides that, if, before the trial of an action brought for payment of a bad check plus damages, the maker pays to the payee in cash the amount of the check, draft, or order plus reasonable costs not to exceed \$50, the provision for double damages does not apply. The bill would require that this payment be for the amount of the bad check and a \$25 processing fee, plus reasonable costs that did not exceed \$250.

Retail Fraud

The RJA provides that, in addition to penal sanctions, a person who commits first- or second-degree 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 and not more than \$100. The bill, instead, specifies that a person who committed first-, second-, or third-degree retail fraud would be liable for the property's full retail price and a civil penalty of *either* four times the retail price of the property or \$100, whichever was greater.

In addition, under the RJA, a person who commits retail fraud and who fails to comply with a written demand for payment of the full retail price plus the penalty is liable to the merchant for the full retail price, unless the property is recovered in salable condition, plus a civil penalty of \$200 and reasonable costs not exceeding \$50. Under the bill, the offender would be liable for a civil penalty of either four times the retail price or \$100, whichever was greater, and costs of \$250.

The RJA allows a merchant to recover damages in a civil action against a parent or parents of an unemancipated minor who lives with his or her parent or parents and who commits retail fraud. The bill specifies that damages recovered from a parent or parents could not exceed \$5,000.

The RJA allows a merchant to recover the amount for which a person is civilly liable only if a "formal police report is filed with the prosecuting attorney or municipal attorney". The bill, instead, would allow a merchant to recover damages and costs if a "verified written report" were filed with a local law enforcement agency that had jurisdiction of the location where the violation occurred.

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

Legislative Analyst: P. Affholter

FISCAL IMPACT

The bill would have an indeterminate fiscal impact on the Department of Corrections.

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 savings 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, and a corresponding savings of \$5.3 million. The increase in fines proposed in the bills also could provide judges with other nonprison sentencing options that also could reduce prison commitments.

The bills, however, 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 method 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.

1994 Prison Commitments for Crimes in House Bills 4197 and 4198

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
TOTAL:.....		1,181

Fiscal Analyst: M. Hansen

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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.