

HOUSE BILL No. 4446

March 5, 1997, Introduced by Reps. Profit, Nye, Curtis, Dalman, Green, Kukuk and Walberg and referred to the Committee on Judiciary.

A bill to amend 1961 PA 236, entitled
"Revised judicature act of 1961,"
by amending sections 2952 and 2953 (MCL 600.2952 and 600.2953),
section 2952 as added by 1984 PA 276 and section 2953 as added by
1988 PA 50.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2952. (1) ~~Exclusive of any penal sanctions which may~~
2 ~~apply, any person who makes, draws, utters, or delivers any~~
3 ~~check, draft, or order for the payment of money upon any bank or~~
4 ~~other depository, or person, firm, or corporation, which refuses~~
5 ~~to honor the check, draft, or order for lack of funds or credit~~
6 ~~to pay or because the maker has no account with the drawee, and~~
7 ~~who fails to pay the amount of the check, draft, or order in cash~~
8 ~~as provided in subsections (2) and (3) shall be liable for the~~
9 ~~penalty provided in subsection (4).~~ IN ADDITION TO APPLICABLE

1 PENAL SANCTIONS, A PERSON WHO MAKES, DRAWS, UTTERS, OR DELIVERS A
 2 CHECK, DRAFT, OR ORDER FOR PAYMENT OF MONEY UPON A BANK OR OTHER
 3 DEPOSITORY, PERSON, FIRM, OR CORPORATION THAT REFUSES TO HONOR
 4 THE CHECK, DRAFT, OR ORDER FOR LACK OF FUNDS OR CREDIT TO PAY OR
 5 BECAUSE THE MAKER HAS NO ACCOUNT WITH THE DRAWEE IS LIABLE FOR
 6 THE AMOUNT OF THE DISHONORED CHECK, DRAFT, OR ORDER, PLUS A PRO-
 7 CESSING FEE, CIVIL DAMAGES, AND COSTS, AS PROVIDED IN THIS
 8 SECTION.

9 (2) ~~Any~~ A payee OR AN AGENT OF A PAYEE may make a written
 10 demand for payment of a check, draft, or order of the type speci-
 11 fied in subsection (1), which demand ~~shall~~ MAY be delivered to
 12 the maker by ~~certified~~ FIRST-CLASS mail. ~~, return receipt~~
 13 ~~requested, and delivery restricted to the addressee.~~ The text of
 14 the written demand shall be as follows:

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

1 "A CHECK, DRAFT, OR ORDER FOR PAYMENT OF MONEY DRAWN BY YOU
2 FOR \$_____ WAS RETURNED TO ME/US/OUR CLIENT (CLIENT'S NAME)
3 DISHONORED FOR:

4 [] INSUFFICIENT FUNDS

5 [] NO ACCOUNT

6 THIS NOTICE IS A FORMAL DEMAND FOR PAYMENT OF THE FULL
7 AMOUNT OF THE DISHONORED CHECK, DRAFT, OR ORDER PLUS A PROCESSING
8 FEE OF \$25.00 FOR A TOTAL AMOUNT OF \$_____. IF YOU PAY THIS
9 TOTAL AMOUNT WITHIN 4 DAYS AFTER THE DATE THIS NOTICE WAS MAILED,
10 NO FURTHER CIVIL ACTION WILL BE TAKEN AGAINST YOU.

11 IF YOU DO NOT PAY THE \$_____ AS REQUESTED ABOVE, BUT
12 WITHIN 30 DAYS AFTER THE DATE THIS NOTICE WAS MAILED YOU PAY THE
13 AMOUNT OF THE DISHONORED CHECK, DRAFT, OR ORDER PLUS A \$35.00
14 PROCESSING FEE, FOR A TOTAL AMOUNT OF \$_____, NO FURTHER
15 CIVIL ACTION WILL BE TAKEN AGAINST YOU.

16 IF YOU FAIL TO PAY EITHER AMOUNT INDICATED ABOVE, I/WE/OUR
17 CLIENT WILL BE AUTHORIZED BY STATE LAW TO BRING A CIVIL ACTION
18 AGAINST YOU TO DETERMINE YOUR LEGAL RESPONSIBILITY FOR PAYMENT OF
19 THE CHECK, DRAFT, OR ORDER AND CIVIL DAMAGES AND COSTS ALLOWED BY
20 LAW.

21 IF YOU DISPUTE THE DISHONORING OF THIS CHECK, DRAFT, OR
22 ORDER, YOU SHOULD ALSO CONTACT YOUR BANK OR FINANCIAL INSTITUTION
23 IMMEDIATELY."

24 (3) A DEBT COLLECTOR SHALL NOT SEND A DEMAND DESCRIBED IN
25 SUBSECTION (2) UNTIL THE DEBT COLLECTOR HAS FULLY COMPLIED WITH
26 THE PROCEDURES REQUIRED IN SECTION 809 OF THE FAIR DEBT
27 COLLECTION PRACTICES ACT, TITLE VIII OF THE CONSUMER CREDIT

1 PROTECTION ACT, PUBLIC LAW 90-321, 15 U.S.C. 1692g. AS USED IN
2 THIS SUBSECTION, "DEBT COLLECTOR" MEANS THAT TERM AS DEFINED IN
3 SECTION 803 OF THE FAIR DEBT COLLECTION PRACTICES ACT, TITLE VIII
4 OF THE CONSUMER CREDIT PROTECTION ACT, PUBLIC LAW 90-321, 15
5 U.S.C. 1692a.

6 (4) ~~-(3) If the maker fails to pay the amount of the check,~~
7 ~~draft, or order in cash to the payee within 30 days of receipt of~~
8 ~~the written demand for payment made pursuant to subsection (2),~~
9 ~~the maker shall be liable for the penalty provided in subsection~~
10 ~~(4).~~ THE MAKER OF A DISHONORED CHECK, DRAFT, OR ORDER FOR PAY-
11 MENT OF MONEY IS LIABLE TO THE PAYEE AS PROVIDED IN
12 SUBSECTION (5) IF THE MAKER FAILS TO PAY 1 OF THE FOLLOWING IN
13 CASH TO THE PAYEE OR A DESIGNATED AGENT OF THE PAYEE AFTER THE
14 MAILING OF A WRITTEN DEMAND FOR PAYMENT PURSUANT TO
15 SUBSECTION (2):

16 (A) WITHIN 4 DAYS AFTER THE DATE THE WRITTEN DEMAND PROVIDED
17 IN SUBSECTION (2) IS MAILED, THE FULL AMOUNT OF THE DISHONORED
18 CHECK, DRAFT, OR ORDER, PLUS A PROCESSING FEE OF \$25.00.

19 (B) WITHIN 30 DAYS AFTER THE DATE OF THE MAILING OF THE
20 NOTICE PROVIDED IN SUBSECTION (2), THE FULL AMOUNT OF THE DISHON-
21 ORED CHECK, DRAFT, OR ORDER, PLUS A PROCESSING FEE OF \$35.00.

22 (5) ~~-(4)~~ Except as otherwise provided in ~~this subsection~~
23 ~~and subsection (5)~~ SUBSECTION (6), a maker who fails to make
24 payment pursuant to subsection ~~-(3) shall be~~ (4) AND WHO IS
25 FOUND RESPONSIBLE FOR PAYMENT IN A CIVIL ACTION IS liable to the
26 payee ~~—, including the amount of the check, draft, or order, for~~
27 ~~damages of double the amount of the check, draft, or order, which~~

~~1 damages shall be not less than \$50.00, and not more than \$500.00,~~
~~2 unless justice would not be served by an award of double damages~~
~~3 and would be served by an award of a lesser amount. If the~~
~~4 amount of the check is over \$500.00, the maker shall only be~~
~~5 liable for the amount of the check.~~ FOR PAYMENT OF ALL OF THE
6 FOLLOWING:

7 (A) THE FULL AMOUNT OF THE CHECK, DRAFT, OR ORDER.

8 (B) CIVIL DAMAGES OF 2 TIMES THE AMOUNT OF THE DISHONORED
9 CHECK, DRAFT, OR ORDER OR \$100.00, WHICHEVER IS GREATER.

10 (C) COSTS OF \$250.00.

11 ~~-(5) If, before the trial of an action brought pursuant to~~
~~12 this section, the maker pays to the payee in cash the amount of~~
~~13 the dishonored check, draft, or order plus reasonable costs, such~~
~~14 costs not to exceed \$50.00, subsection (4) shall not apply.~~

15 (6) SUBSECTION (5) DOES NOT APPLY IF, BEFORE THE TRIAL OF AN
16 ACTION BROUGHT PURSUANT TO THIS SECTION, THE MAKER PAYS TO THE
17 PAYEE OR A DESIGNATED AGENT OF THE PAYEE, IN CASH, THE TOTAL OF
18 THE AMOUNTS DESCRIBED IN SUBSECTION (4)(B), PLUS REASONABLE
19 COSTS, NOT EXCEEDING \$250.00, AS AGREED TO BY THE PARTIES.

20 (7) ~~-(6)~~ An action under this section may be brought in the
21 small claims division of the district court, if it does not
22 exceed the jurisdiction of the small claims division, or in any
23 other appropriate court. If the amount of the check exceeds the
24 jurisdiction of the small claims division, the action may still
25 be brought in the small claims division, but the amount of dam-
26 ages awarded shall not exceed the jurisdiction of the small
27 claims division.

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

9 Sec. 2953. (1) In addition to ~~any~~ APPLICABLE penal
10 ~~sanction~~ SANCTIONS, a person who commits an act for which he or
11 she could be charged with ~~the crime of~~ retail fraud in the
12 first, ~~or~~ second, OR THIRD degree ~~, as defined in~~ UNDER sec-
13 tions 356c and 356d of the Michigan ~~Penal Code, Act No. 328 of~~
14 ~~the Public Acts of 1931, being sections 750.356c and 750.356d of~~
15 ~~the Michigan Compiled Laws, shall be~~ PENAL CODE, 1931 PA 328,
16 MCL 750.356C AND 750.356D, IS liable to the merchant who is the
17 victim of the act for the full retail price of unrecovered prop-
18 erty or recovered property that is not in salable condition, and
19 ~~a civil penalty~~ DAMAGES of 10 times the retail price of the
20 property, but not less than ~~\$40.00~~ \$75.00 and not more than
21 ~~\$100.00~~ \$200.00.

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~~ MAY be deliv-
4 ered to the person from whom payment is demanded ~~in person or~~
5 by ~~certified~~ FIRST-CLASS mail. ~~, return receipt requested, and~~
6 ~~delivery restricted to the addressee.~~ The text of the written
7 demand shall be as follows:

8 ~~"We have cause to believe that on _____ (date) you~~
9 ~~committed retail fraud in the first degree or second degree by~~
10 ~~_____ (description of action and personal property) in our~~
11 ~~store. If, within 30 days of the time you receive this notice,~~
12 ~~you return the property in salable condition or pay to us \$_____,~~
13 ~~which represents the full retail price/remaining balance of the~~
14 ~~full retail price of the property, plus an amount of 10 times the~~
15 ~~retail price of the property, but not less than \$40.00 and not~~
16 ~~more than \$100.00, equaling a total amount of \$_____, we will not~~
17 ~~take further civil action against you for this incident.~~

18 ~~If you fail to comply with this demand, we have the right to~~
19 ~~bring an action against you in court for \$_____, which represents~~
20 ~~the full retail price/remaining balance of the full retail price~~
21 ~~of the property; a \$200.00 civil penalty; and our reasonable~~
22 ~~costs, not to exceed \$50.00; equaling a total amount of \$_____."~~

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

26 ~~"You are (your minor child is) accused of~~
27 ~~retail fraud. Michigan law allows the merchant to~~

1 ~~ask in writing that you return or pay for the~~
2 ~~merchandise and pay an amount of \$_____.~~ If
3 ~~you do, no further civil action will be taken~~
4 ~~against you. This civil action has no effect on~~
5 ~~possible criminal action.~~

6 ~~You do not have to respond to this letter if~~
7 ~~you are innocent or choose not to respond.~~
8 ~~However, if you do not respond, the merchant may~~
9 ~~then sue you in small claims court. Both you and~~
10 ~~the merchant will state your case in your own words~~
11 ~~without lawyers. The decision of the small claims~~
12 ~~court is final and cannot be appealed.~~

13 ~~If you wish to be represented by a lawyer you~~
14 ~~may ask that the case against you be heard by the~~
15 ~~district court. You and the merchant may be repre-~~
16 ~~sented by a lawyer and have the right to appeal to~~
17 ~~a higher court.~~

18 ~~Questions regarding court procedures can be~~
19 ~~answered by the clerk of the district court."~~

20 "WE HAVE CAUSE TO BELIEVE THAT ON ____(DATE)____ YOU, OR YOUR
21 MINOR CHILD ____(CHILD'S NAME)____, COMMITTED RETAIL FRAUD IN THE
22 FIRST, SECOND, OR THIRD DEGREE BY ____(DESCRIPTION OF ACTION AND
23 PROPERTY INVOLVED)____ IN OUR STORE OR IN ITS IMMEDIATE VICINITY.

1 STATE LAW AUTHORIZES US TO DEMAND IN WRITING THAT YOU DO ALL
2 OF THE FOLLOWING, AS APPLICABLE:

3 [] RETURN THE PROPERTY IN SALABLE CONDITION OR PAY TO
4 US \$_____, WHICH REPRESENTS THE FULL RETAIL PRICE OR
5 THE REMAINING BALANCE OF THE FULL RETAIL PRICE OF THE
6 PROPERTY.

7 [] PAY TO US \$_____, WHICH REPRESENTS THE FULL
8 RETAIL PRICE OF THE RECOVERED PROPERTY THAT IS NOT IN
9 SALABLE CONDITION.

10 [] PAY TO US CIVIL DAMAGES IN AN AMOUNT EQUAL TO 10
11 TIMES THE RETAIL PRICE OF THE PROPERTY INVOLVED, BUT
12 NOT LESS THAN \$75.00 OR MORE THAN \$200.00, EQUALING A
13 TOTAL AMOUNT OF \$_____.

14 THIS NOTICE IS A FORMAL DEMAND FOR RETURN OF THE PROPERTY
15 INVOLVED, IF APPLICABLE, AND THE PAYMENT OF THE AMOUNTS INDICATED
16 ABOVE, EQUALING A TOTAL AMOUNT OF \$_____. IF YOU RETURN ANY
17 UNRECOVERED PROPERTY AND PAY THE AMOUNTS INDICATED ABOVE TO US
18 WITHIN 30 DAYS AFTER THE DATE THIS NOTICE WAS MAILED, WE WILL NOT
19 TAKE ANY FURTHER CIVIL ACTION AGAINST YOU.

20 YOU ARE NOT REQUIRED TO RESPOND TO THIS DEMAND IF YOU
21 BELIEVE THAT YOU OR YOUR MINOR CHILD ARE NOT GUILTY OF COMMITTING
22 RETAIL FRAUD OR IF YOU CHOOSE NOT TO RESPOND. IF YOU FAIL TO
23 COMPLY WITH THIS DEMAND, WE WILL BE AUTHORIZED BY STATE LAW TO
24 BRING A CIVIL ACTION AGAINST YOU TO DETERMINE YOUR LEGAL RESPON-
25 SIBILITY FOR THE RETURN OF ANY UNRECOVERED PROPERTY AND THE PAY-
26 MENT OF THE AMOUNTS INDICATED ABOVE PLUS THE COST OF THE ACTION,
27 INCLUDING REASONABLE ATTORNEY FEES.

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1 THESE CIVIL PROCEEDINGS DO NOT PREVENT CRIMINAL PROSECUTION
2 FOR THE ALLEGED ACT OF RETAIL FRAUD."

3 (3) ~~-(4)-~~ If the person to whom a written demand is made
4 under subsection (2) complies with the written demand within
5 30 days after ~~its receipt~~ THE DATE THE WRITTEN DEMAND IS
6 MAILED, that person shall incur no further civil liability to the
7 merchant from the act of retail fraud.

8 (4) ~~-(5)-~~ A person who commits an act described in
9 subsection (1) and who fails to comply with a written demand
10 under subsection (2) ~~shall be~~ IS liable to the merchant for the
11 full retail price of the property, unless the property was recov-
12 ered in salable condition, plus ~~a~~ civil ~~penalty~~ DAMAGES of 10
13 TIMES THE RETAIL PRICE OF THE PROPERTY BUT NOT LESS THAN \$75.00
14 OR MORE THAN \$200.00, and ~~reasonable~~ costs OF THE ACTION, ~~not~~
15 ~~exceeding \$50.00~~ INCLUDING REASONABLE ATTORNEY FEES.

16 (5) ~~-(6)-~~ If a civil action is filed pursuant to this sec-
17 tion and before the trial of the action is commenced the person
18 to whom a written demand was made under subsection (2) pays the
19 merchant in cash the amount demanded, subsection ~~-(5)-shall~~ (4)
20 DOES not apply.

21 (6) ~~-(7)-~~ An action under this section may be brought in the
22 small claims division of the district court or in any other court
23 of competent jurisdiction. If the amount demanded exceeds the
24 jurisdiction of the small claims division, the action may still
25 be brought in the small claims division, but the amount recovered
26 shall not exceed the jurisdiction of the small claims division.

1 (7) ~~-(8)-~~ A merchant may recover damages in an amount
2 allowable under this section in a civil action in a court of
3 competent jurisdiction against the parent or parents of an
4 unemancipated minor ~~who lives with his or her parent or parents~~
5 ~~and~~ who commits an act described in subsection (1). THE DAMAGES
6 RECOVERED UNDER THIS SUBSECTION SHALL NOT EXCEED \$5,000.00.

7 (8) ~~-(9)-~~ A merchant may recover the amount for which a
8 person is civilly liable under this section only if a formal
9 police report is filed with ~~the prosecuting attorney or municipi-~~
10 ~~pal attorney~~ A LOCAL LAW ENFORCEMENT AGENCY THAT HAS JURISDIC-
11 TION OVER THE LOCATION WHERE THE VIOLATION TOOK PLACE, WHICH
12 REPORT SETS FORTH FACTS alleging that the person has committed
13 retail fraud in the first, ~~or~~ second, OR THIRD degree or vio-
14 lated a local ordinance substantially corresponding to
15 section 218, 356, 356c, or 356d of the Michigan penal code, ~~Act~~
16 ~~No. 328 of the Public Acts of 1931, being sections 750.218,~~
17 ~~750.356, 750.356c, and 750.356d of the Michigan Compiled Laws~~
18 ~~1931 PA 328, MCL 750.218, 750.356, 750.356C, AND 750.356D,~~
19 regardless of the outcome of any criminal action.

20 (9) ~~-(10)-~~ Notwithstanding any other provision of this sec-
21 tion, a merchant shall not recover ~~a civil penalty~~ DAMAGES
22 for an act of retail fraud in the first, ~~or~~ second, OR THIRD
23 degree with regard to a particular item of property if the mer-
24 chant violated section 3 of ~~Act No. 449 of the Public Acts of~~
25 ~~1976, being section 445.353 of the Michigan Compiled Laws~~ 1976
26 PA 449, MCL 445.353, with regard to that item of property and the

1 violation was not caused by the person who committed the act of
2 retail fraud.

3 Enacting section 1. This amendatory act takes effect
4 January 1, 1998.

5 Enacting section 2. This amendatory act does not take
6 effect unless all of the following bills of the 89th Legislature
7 are enacted into law:

8 (a) Senate Bill No. _____ or House Bill No. _____
9 (request no. 01762'97).

10 (b) Senate Bill No. _____ or House Bill No. _____
11 (request no. 01763'97).