



House
Legislative
Analysis
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REVISE LARCENY STATUTES

House Bill 4197 with committee
amendments

Sponsor: Rep. Kirk A. Profit

House Bill 4198 with committee
amendments

Sponsor: Rep. Michael E. Nye

House Bill 4199 with committee
amendments

Sponsor: Rep. Eric Bush

First Analysis (2-2-95)

Committee: Judiciary and Civil Rights

THE APPARENT PROBLEM:

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 previously been in effect since at least 1931, when the penal code was first enacted as Public Act 328 of 1931. In the ensuing years, inflation alone has caused offenses once considered misdemeanors to become felonies. Many have for some time been urging that the misdemeanor/felony threshold be raised, and that the penalties applicable to various types of larceny be standardized.

However, to raise the misdemeanor/felony larceny threshold carries additional complications. If the threshold is raised, then merchants who sought criminal penalties would have less with which to prosecute shoplifters and bad check passers. Therefore, it has been argued, any increase in the misdemeanor/felony threshold should be accompanied by changes in the retail fraud and bad check statutes, especially with regard to civil remedies, that would improve merchants' ability to take action against and find redress from shoplifters, credit thieves, and bad check passers.

THE CONTENT OF THE BILLS:

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 14 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. None of the bills could take effect unless all were enacted. A more detailed explanation follows.

Four-tier structure. Current penalties for 14 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

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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.

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; 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 would be applied to offenses involving \$1,000 or more. Maximum penalties for the offense, which is now a two-year felony subject to a fine of up to \$1,000, 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, which would apply to offenses involving \$200 to \$1,000, 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 merchants (and other payees) who instituted statutory notice and demand procedures could demand in addition to the face amount of the check in order to avert 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.

FISCAL IMPLICATIONS:

There is no fiscal information at present. (2-1-95)

ARGUMENTS:

For:

The bills would address the changes that inflation has wrought on criminal law, turning larceny offenses that once were misdemeanors into felonies. However, if this is to be done, then merchants, who already are plagued by shoplifters and bad check passers, would need improvements in civil remedies--improvements that the bills would make -- that would help to free merchants from dependence on criminal prosecution. With regard to criminal prosecutions, however, the bills would do more than merely raise the misdemeanor/felony threshold. The four-tier penalty structure would offer stiffer penalties for the most egregious offenses, and allow strong misdemeanor penalties for offenses that may technically be prosecutable as felonies under current law, but which typically are pled down to misdemeanors. By making even the lesser misdemeanor offenses 93-day misdemeanors, the bills would ensure that these offenders were

fingerprinted and had criminal records maintained on them; the bill thus would enable repeat violators (at least those who were prosecuted for statutory violations) to be identified. By retaining current statutory distinctions between the various types of larcenies, the bills would preserve the body of interpretive case law (which provides, for instance, fuller explanations of the elements of an offense) that has developed on each affected section of the penal code. The bills would update and standardize criminal sanctions for theft and improve civil remedies for victims of retail fraud and bad checks.

supports the bills. (2-1-95)

Detroit Edison does not have a position on the bills with the committee amendments. (2-1-95)

Against:

Criticisms of the bills could come from a number of perspectives. For instance, some may find the bills' approach in retaining current distinctions between various types of larcenies to be unnecessarily cumbersome, preferring instead to simply repeal existing laws and replace them with a simplified penalty structure applying to all larcenies. Others may prefer that the bills do more in the way of allowing stolen amounts to be aggregated, so that an ongoing course of conduct (for example, going on a buying spree with a stolen credit card number) can be appropriately punished. Particular concerns may be raised by a committee amendment to House Bill 4197 that eliminates Section 282, dealing with "theft" of utility service, from the bill and thus from the four-tier larceny structure. One of the main aims of the legislation is to provide a consistent and coherent penalty structure for larceny offenses; to the degree that a larceny offense is eliminated from this four-tier structure, this aim is thwarted.

Response:

Utility companies need to maintain their current \$500 misdemeanor/felony threshold so that its value as a deterrent can be maintained. Utilities point out that those who might steal utility service are well aware at what point a misdemeanor becomes a felony, and that a relatively low threshold serves to keep theft levels down. To raise the threshold to \$1,000, argue utilities, would be to invite thefts of up to \$1,000.

POSITIONS:

The Michigan Retailers Association supports the bills. (2-1-95)

The National Federation of Independent Business supports the bills. (2-1-95)

The Prosecuting Attorneys Association of Michigan