



HOUSE BILL No. 4969

July 22, 1993, Introduced by Rep. Nye and referred to the Committee on Judiciary.

A bill to amend sections 356c and 356d of Act No. 328 of the Public Acts of 1931, entitled as amended

"Michigan penal code,"

as added by Act No. 20 of the Public Acts of 1988, being sections 750.356c and 750.356d of the Michigan Compiled Laws; to add sections 356e, 356f, 356g, 356h, 356i, 356j, 356k, 356l, 356m, and 356n; and to repeal certain parts of the act.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 356c and 356d of Act No. 328 of the
2 Public Acts of 1931, as added by Act No. 20 of the Public Acts of
3 1988, being sections 750.356c and 750.356d of the Michigan
4 Compiled Laws, are amended and sections 356e, 356f, 356g, 356h,
5 356i, 356j, 356k, 356l, 356m, and 356n are added to read as
6 follows:

1 Sec. 356c. (1) A person who does any of the following in a
2 store or in its immediate vicinity is guilty of retail fraud in
3 the first degree, a felony punishable by imprisonment for not
4 more than 2 years ~~—~~ or a fine of not more than \$1,000.00, or
5 both:

6 (a) While a store is open to the public, alters, transfers,
7 removes and replaces, conceals, or otherwise misrepresents the
8 price at which property is offered for sale, with the intent not
9 to pay for the property or to pay less than the price at which
10 the property is offered for sale, if the resulting difference in
11 price is more than \$100.00.

12 (b) While a store is open to the public, steals property of
13 the store that is offered for sale at a price of more than
14 \$100.00.

15 (c) With intent to defraud, obtains or attempts to obtain
16 money or property from the store as a refund or exchange for
17 property that was not paid for and belongs to the store, if the
18 amount of money, or the value of the property, obtained or
19 attempted to be obtained is more than \$100.00.

20 (2) A person who violates section 356d and has 1 or more
21 prior convictions under this section, section ~~218, 356,~~ 356d,
22 356H, 356I, or ~~360,~~ 356J, OR FORMER SECTION 218, 356, OR 360 OF
23 THIS ACT, or a local ordinance substantially corresponding to
24 this section or section ~~218, 356,~~ 356d, 356H, 356I, or ~~360~~
25 356J, OR FORMER SECTION 218, 356, OR 360 OF THIS ACT, is guilty
26 of retail fraud in the first degree.

1 (3) A person who commits the crime of retail fraud in the
2 first degree shall not be prosecuted under ~~the felony provision~~
3 ~~of section 356, or under section 218 or 360~~ SECTION 356H, 356I,
4 OR 356J.

5 Sec. 356d. (1) A person who does any of the following in a
6 store or in its immediate vicinity is guilty of retail fraud in
7 the second degree, a misdemeanor punishable by imprisonment for
8 not more than 93 days ~~—~~ or a fine of not more than \$100.00, or
9 both:

10 (a) While a store is open to the public, alters, transfers,
11 removes and replaces, conceals, or otherwise misrepresents the
12 price at which property is offered for sale, with the intent not
13 to pay for the property or to pay less than the price at which
14 the property is offered for sale.

15 (b) While a store is open to the public, steals property of
16 the store that is offered for sale.

17 (c) With intent to defraud, obtains or attempts to obtain
18 money or property from the store as a refund or exchange for
19 property that was not paid for and belongs to the store.

20 (2) A person who commits the crime of retail fraud in the
21 second degree shall not be prosecuted under ~~the felony provision~~
22 ~~of section 356, or under section 218 or 360~~ SECTION 356H, 356I,
23 356J, 356K, OR 356L.

24 SEC. 356E. FOR THE PURPOSES OF THIS SECTION AND SECTIONS
25 356F TO 356N, THE WORDS AND PHRASES DEFINED IN SECTIONS 356F AND
26 356G HAVE THE MEANINGS ASCRIBED TO THEM IN THOSE SECTIONS.

1 SEC. 356F. (1) "COIN MACHINE" MEANS A COIN BOX, TURNSTILE,
2 VENDING MACHINE, OR OTHER MECHANICAL OR ELECTRONIC DEVICE OR
3 RECEPTACLE DESIGNED TO RECEIVE A COIN OR BILL OF A CERTAIN DENOM-
4 INATION OR A TOKEN MADE FOR THE PURPOSE AND, IN RETURN FOR THE
5 INSERTION AND DEPOSIT OF THE COIN, BILL, OR TOKEN, AUTOMATICALLY
6 TO OFFER, PROVIDE, ASSIST IN PROVIDING, OR PERMIT THE ACQUISITION
7 OF PROPERTY OR A PUBLIC OR PRIVATE SERVICE.

8 (2) EXCEPT AS PROVIDED IN SUBSECTION (3), "DECEPTION" MEANS
9 ANY OF THE FOLLOWING ACTS:

10 (A) KNOWINGLY CREATING OR CONFIRMING A FALSE IMPRESSION.

11 (B) AFTER CREATING OR CONFIRMING A FALSE IMPRESSION, KNOW-
12 INGLY FAILING TO CORRECT THAT IMPRESSION.

13 (C) KNOWINGLY PREVENTING ANOTHER PERSON FROM ACQUIRING
14 INFORMATION PERTINENT TO THE DISPOSITION OF PROPERTY.

15 (D) KNOWINGLY SELLING OR OTHERWISE TRANSFERRING OR ENCUMBER-
16 ING PROPERTY WITHOUT DISCLOSING A LIEN, ADVERSE CLAIM, OR OTHER
17 LEGAL IMPEDIMENT TO THE ENJOYMENT OF THE PROPERTY, WHETHER THAT
18 IMPEDIMENT IS VALID OR IS A MATTER OF OFFICIAL RECORD.

19 (E) PROMISING PERFORMANCE WHILE INTENDING NOT TO PERFORM.

20 DECEPTION AS TO A PERSON'S INTENTION OR OTHER STATE OF MIND SHALL
21 NOT BE INFERRED FROM THE FACT ALONE THAT THE PERSON DID NOT SUB-
22 SEQUENTLY PERFORM AS PROMISED.

23 (3) DECEPTION DOES NOT INCLUDE FALSITY AS TO A MATTER HAVING
24 NO PECUNIARY SIGNIFICANCE OR THE EXAGGERATED COMMENDATION OF
25 WARES BY STATEMENTS UNLIKELY TO DECEIVE AN ORDINARY PERSON.

26 (4) "DEPRIVE PERMANENTLY" MEANS ANY OF THE FOLLOWING:

1 (A) TO WITHHOLD PROPERTY OR CAUSE IT TO BE WITHHELD FROM A
2 PERSON PERMANENTLY OR FOR SO EXTENDED A PERIOD OR UNDER SUCH
3 CIRCUMSTANCES THAT THE PERSON LOSES A SIGNIFICANT PORTION OF THE
4 PROPERTY'S ECONOMIC VALUE OR THE USE AND BENEFIT OF THE
5 PROPERTY.

6 (B) TO DISPOSE OF PROPERTY SO AS TO MAKE IT UNLIKELY THAT
7 THE OWNER WILL RECOVER IT.

8 (C) TO RETAIN PROPERTY WITH INTENT TO RESTORE IT TO THE
9 OWNER ONLY IF THE OWNER PURCHASES OR LEASES IT BACK OR PAYS A
10 REWARD OR OTHER COMPENSATION FOR ITS RETURN.

11 (D) TO SELL, GIVE, PLEDGE, OR OTHERWISE TRANSFER AN INTEREST
12 IN PROPERTY.

13 (E) TO SUBJECT PROPERTY TO THE CLAIM OF A PERSON OTHER THAN
14 THE OWNER.

15 (5) "OBTAIN" MEANS TO BRING ABOUT A TRANSFER OR PURPORTED
16 TRANSFER OF A LEGALLY RECOGNIZED INTEREST IN PROPERTY, WHETHER TO
17 THE OBTAINER OR ANOTHER PERSON.

18 (6) "OWNER" MEANS A PERSON OTHER THAN THE DEFENDANT WHO HAS
19 POSSESSION OF OR ANY OTHER INTEREST IN PROPERTY, EVEN IF THAT
20 POSSESSION OR INTEREST IS UNLAWFUL, AND WITHOUT WHOSE CONSENT THE
21 DEFENDANT HAS NO AUTHORITY TO EXERT CONTROL OVER THE PROPERTY.
22 PROPERTY IN THE POSSESSION OF A PERSON IS NOT CONSIDERED OWNED BY
23 ANOTHER PERSON WHO HAS ONLY A SECURITY INTEREST IN THE PROPERTY,
24 EVEN IF LEGAL TITLE IS IN THE OTHER PERSON PURSUANT TO A CONDI-
25 TIONAL SALES CONTRACT OR OTHER SECURITY AGREEMENT.

1 (7) "PROPERTY" MEANS ANYTHING OF VALUE, INCLUDING MONEY,
2 PERSONAL PROPERTY, REAL PROPERTY, A THING IN ACTION, A COMPUTER
3 PROGRAM, COMPUTER DATA, AND EVIDENCE OF DEBT OR CONTRACT.

4 (8) "STOLEN" MEANS OBTAINED OR SUBJECTED TO UNAUTHORIZED
5 CONTROL AS A RESULT OF THE THEFT.

6 SEC. 356G. "THEFT" MEANS THE COMMISSION OF EITHER OF THE
7 FOLLOWING ACTS WITH THE INTENT TO DEPRIVE THE OWNER PERMANENTLY
8 OF PROPERTY:

9 (A) KNOWINGLY OBTAINING OR EXERTING UNAUTHORIZED CONTROL
10 OVER THE OWNER'S PROPERTY. IF THE PROPERTY IS IMMOVABLE, THEFT
11 INCLUDES THE UNAUTHORIZED TRANSFER OF THE PROPERTY OR AN INTEREST
12 IN THE PROPERTY TO BENEFIT THE PERSON TRANSFERRING THE PROPERTY
13 OR INTEREST OR ANOTHER PERSON NOT ENTITLED TO THE PROPERTY.

14 (B) KNOWINGLY OBTAINING CONTROL OVER THE OWNER'S PROPERTY BY
15 DECEPTION.

16 SEC. 356H. (1) A PERSON WHO DOES EITHER OF THE FOLLOWING IS
17 GUILTY OF FIRST DEGREE THEFT:

18 (A) COMMITS THEFT OF PROPERTY THAT HAS A VALUE OF MORE THAN
19 \$20,000.00.

20 (B) COMMITS THEFT OF PROPERTY OF ANY VALUE IF THE PROPERTY
21 IS TAKEN FROM THE PERSON OF ANOTHER.

22 (2) FIRST DEGREE THEFT IS A FELONY PUNISHABLE BY IMPRISON-
23 MENT FOR NOT MORE THAN 10 YEARS OR A FINE OF NOT MORE THAN
24 \$20,000.00 OR 3 TIMES THE VALUE OF THE PROPERTY STOLEN, WHICHEVER
25 IS GREATER, OR BOTH THE IMPRISONMENT AND THE FINE.

1 (3) THE INDICTMENT OR INFORMATION CHARGING A PERSON WITH
2 FIRST DEGREE THEFT SHALL SPECIFY THE SUBDIVISION OF
3 SUBSECTION (1) UNDER WHICH THE PERSON IS CHARGED.

4 SEC. 356I. A PERSON WHO COMMITS THEFT OF PROPERTY THAT HAS
5 A VALUE OF MORE THAN \$5,000.00 IS GUILTY OF SECOND DEGREE THEFT,
6 A FELONY PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 5 YEARS OR
7 A FINE OF NOT MORE THAN \$10,000.00 OR 3 TIMES THE VALUE OF THE
8 PROPERTY STOLEN, WHICHEVER IS GREATER, OR BOTH THE IMPRISONMENT
9 AND THE FINE.

10 SEC. 356J. (1) A PERSON WHO DOES EITHER OF THE FOLLOWING IS
11 GUILTY OF THIRD DEGREE THEFT:

12 (A) COMMITS THEFT OF PROPERTY OF ANY VALUE, OTHER THAN
13 RETAIL FRAUD IN THE FIRST OR SECOND DEGREE AS PROVIDED IN
14 SECTIONS 356C AND 356D, IF THE PROPERTY IS TAKEN IN A BUILDING OR
15 FROM A MOTOR VEHICLE OR COIN MACHINE.

16 (B) COMMITS THEFT OF PROPERTY THAT HAS A VALUE OF MORE THAN
17 \$1,000.00.

18 (2) THIRD DEGREE THEFT IS A FELONY PUNISHABLE BY IMPRISON-
19 MENT FOR NOT MORE THAN 2 YEARS OR A FINE OF NOT MORE THAN
20 \$5,000.00 OR 3 TIMES THE VALUE OF THE PROPERTY STOLEN, WHICHEVER
21 IS GREATER, OR BOTH THE IMPRISONMENT AND THE FINE.

22 (3) THE INDICTMENT OR INFORMATION CHARGING A PERSON WITH
23 THIRD DEGREE THEFT SHALL SPECIFY THE SUBDIVISION OF
24 SUBSECTION (1) UNDER WHICH THE PERSON IS CHARGED.

25 SEC. 356K. A PERSON WHO COMMITS THEFT OF PROPERTY THAT HAS
26 A VALUE OF MORE THAN \$250.00 IS GUILTY OF FOURTH DEGREE THEFT, A
27 MISDEMEANOR PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 1 YEAR

1 OR A FINE OF NOT MORE THAN \$2,000.00 OR 3 TIMES THE VALUE OF THE
2 PROPERTY STOLEN, WHICHEVER IS GREATER, OR BOTH THE IMPRISONMENT
3 AND THE FINE.

4 SEC. 356L. A PERSON WHO COMMITS THEFT OF PROPERTY, OTHER
5 THAN RETAIL FRAUD IN THE FIRST OR SECOND DEGREE AS PROVIDED IN
6 SECTIONS 356C AND 356D, IS GUILTY OF FIFTH DEGREE THEFT, A MISDE-
7 MEANOR PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 90 DAYS OR A
8 FINE OF NOT MORE THAN \$500.00 OR 3 TIMES THE VALUE OF THE PROP-
9 ERTY STOLEN, WHICHEVER IS GREATER, OR BOTH THE IMPRISONMENT AND
10 THE FINE.

11 SEC. 356M. FOR THE PURPOSES OF SECTIONS 356H TO 356L, THE
12 VALUE OF PROPERTY STOLEN IN THEFTS COMMITTED PURSUANT TO A SCHEME
13 OR COURSE OF CONDUCT, WHETHER THE THEFTS ARE FROM THE SAME PERSON
14 OR SEVERAL PERSONS, MAY BE AGGREGATED IN DETERMINING THE DEGREE
15 OF THE OFFENSE.

16 SEC. 356N. IT IS A DEFENSE TO PROSECUTION FOR THEFT IN ANY
17 DEGREE THAT THE PERSON ACTED UNDER AN HONEST CLAIM OF RIGHT TO
18 THE PROPERTY INVOLVED OR AN HONEST BELIEF THAT THE PERSON HAD A
19 RIGHT TO ACQUIRE OR DISPOSE OF THE PROPERTY AS HE OR SHE DID.

20 Section 2. Sections 218, 356, 356a, 357, 360, 362, 363, and
21 367 of Act No. 328 of the Public Acts of 1931, being sections
22 750.218, 750.356, 750.356a, 750.357, 750.360, 750.362, 750.363,
23 and 750.367 of the Michigan Compiled Laws, are repealed.