

HOUSE BILL No. 5348

December 11, 1989, Introduced by Reps. Nye, Perry Bullard, Pridnia, Gubow, Fitzgerald, London, Martin, Dolan, DeMars, Ciaramitaro, DeLange, Hoffman, Power and Bankes 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 "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, and 356m; 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, and 356m are added to read as follows:

6 Sec. 356c. (1) A person who does any of the following in a
7 store or in its immediate vicinity is guilty of retail fraud in

1 the first degree, a felony punishable by imprisonment for not
2 more than 2 years, or a fine of not more than \$1,000.00, or
3 both:

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

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

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

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

25 (3) A person who commits the crime of retail fraud in the
26 first degree shall not be prosecuted under ~~the felony provision~~

1 ~~of section 356, or under section 218 or 360~~ SECTION 356H, 356I,
2 OR 356J.

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

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

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

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.

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

22 SEC. 356E. FOR THE PURPOSES OF THIS SECTION AND SECTIONS
23 356F TO 356M, THE WORDS AND PHRASES DEFINED IN SECTIONS 356F AND
24 356G HAVE THE MEANINGS ASCRIBED TO THEM IN THOSE SECTIONS.

25 SEC. 356F. (1) "COIN MACHINE" MEANS A COIN BOX, TURNSTILE,
26 VENDING MACHINE, OR OTHER MECHANICAL OR ELECTRONIC DEVICE OR
27 RECEPTACLE DESIGNED TO RECEIVE A COIN OR BILL OF A CERTAIN

1 DENOMINATION OR A TOKEN MADE FOR THE PURPOSE, AND IN RETURN FOR
2 THE INSERTION AND DEPOSIT OF THE COIN, BILL, OR TOKEN, AUTOMATI-
3 CALLY TO OFFER, PROVIDE, ASSIST IN PROVIDING, OR PERMIT THE
4 ACQUISITION OF PROPERTY OR A PUBLIC OR PRIVATE SERVICE.

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

7 (A) KNOWINGLY CREATING AND CONFIRMING A FALSE IMPRESSION.

8 (B) AFTER HAVING CREATED OR CONFIRMED A FALSE IMPRESSION,
9 KNOWINGLY FAILING TO CORRECT THAT IMPRESSION.

10 (C) KNOWINGLY PREVENTING ANOTHER PERSON FROM ACQUIRING
11 INFORMATION PERTINENT TO THE DISPOSITION OF THE PROPERTY
12 INVOLVED.

13 (D) KNOWINGLY SELLING OR OTHERWISE TRANSFERRING OR ENCUMBER-
14 ING PROPERTY WITHOUT DISCLOSING A LIEN, ADVERSE CLAIM, OR OTHER
15 LEGAL IMPEDIMENT TO THE ENJOYMENT OF THE PROPERTY, WHETHER OR NOT
16 THAT IMPEDIMENT IS VALID OR IS A MATTER OF OFFICIAL RECORD.

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

18 (3) DECEPTION DOES NOT INCLUDE FALSITY AS TO A MATTER HAVING
19 NO PECUNIARY SIGNIFICANCE OR PUFFING BY MAKING STATEMENTS
20 UNLIKELY TO DECEIVE AN ORDINARY PERSON. AS USED IN THIS SUBSEC-
21 TION, "PUFFING" MEANS THE EXAGGERATED COMMENDATION OF WARES.

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

23 (A) TO WITHHOLD PROPERTY OR CAUSE IT TO BE WITHHELD FROM A
24 PERSON PERMANENTLY OR FOR SO EXTENDED A PERIOD OR UNDER SUCH CIR-
25 CUMSTANCES THAT A SIGNIFICANT PORTION OF THE PROPERTY'S ECONOMIC
26 VALUE OR THE USE AND BENEFIT OF THE PROPERTY IS LOST TO THE
27 PERSON.

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

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

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

8 (E) TO SUBJECT PROPERTY TO THE CLAIM OF A PERSON OTHER THAN
9 THE OWNER.

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

13 (6) "OWNER" MEANS A PERSON, OTHER THAN THE DEFENDANT, WHO
14 HAS POSSESSION OF OR ANY OTHER INTEREST IN THE PROPERTY INVOLVED,
15 EVEN THOUGH THAT POSSESSION OR INTEREST IS UNLAWFUL, AND WITHOUT
16 WHOSE CONSENT THE DEFENDANT HAS NO AUTHORITY TO EXERT CONTROL
17 OVER THE PROPERTY.

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

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

23 SEC. 356G. "THEFT" MEANS THE COMMISSION OF EITHER OF THE
24 FOLLOWING ACTS WITH THE INTENT TO DEPRIVE THE OWNER PERMANENTLY
25 OF THE PROPERTY:

26 (A) KNOWINGLY OBTAINING OR EXERTING UNAUTHORIZED CONTROL
27 OVER THE PROPERTY OF THE OWNER.

1 (B) KNOWINGLY OBTAINING BY DECEPTION CONTROL OVER THE
2 PROPERTY OF THE OWNER.

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

5 (A) COMMITS THEFT OF PROPERTY THAT IS MORE THAN \$20,000.00
6 IN VALUE.

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

9 (2) THEFT IN THE FIRST DEGREE IS A FELONY PUNISHABLE BY
10 IMPRISONMENT FOR NOT MORE THAN 10 YEARS OR A FINE OF NOT MORE
11 THAN \$20,000.00 OR 3 TIMES THE VALUE OF THE PROPERTY STOLEN,
12 WHICHEVER IS GREATER, OR BOTH THE IMPRISONMENT AND THE FINE.

13 SEC. 356I. (1) A PERSON WHO COMMITS THEFT OF PROPERTY THAT
14 IS MORE THAN \$5,000.00 IN VALUE IS GUILTY OF THEFT IN THE SECOND
15 DEGREE.

16 (2) THEFT IN THE SECOND DEGREE IS A FELONY PUNISHABLE BY
17 IMPRISONMENT FOR NOT MORE THAN 5 YEARS OR A FINE OF NOT MORE THAN
18 \$10,000.00 OR 3 TIMES THE VALUE OF THE PROPERTY STOLEN, WHICHEVER
19 IS GREATER, OR BOTH THE IMPRISONMENT AND THE FINE.

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

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

26 (B) COMMITS THEFT OF PROPERTY THAT IS MORE THAN \$1,000.00 IN
27 VALUE.

1 (2) THEFT IN THE THIRD DEGREE IS A FELONY PUNISHABLE BY
2 IMPRISONMENT FOR NOT MORE THAN 2 YEARS OR A FINE OF NOT MORE THAN
3 \$5,000.00 OR 3 TIMES THE VALUE OF THE PROPERTY STOLEN, WHICHEVER
4 IS GREATER, OR BOTH THE IMPRISONMENT AND THE FINE.

5 SEC. 356K. (1) A PERSON WHO COMMITS THEFT OF PROPERTY THAT
6 IS MORE THAN \$250.00 IN VALUE IS GUILTY OF THEFT IN THE FOURTH
7 DEGREE.

8 (2) THEFT IN THE FOURTH DEGREE IS A MISDEMEANOR PUNISHABLE
9 BY IMPRISONMENT FOR NOT MORE THAN 1 YEAR OR A FINE OF NOT MORE
10 THAN \$2,000.00 OR 3 TIMES THE VALUE OF THE PROPERTY STOLEN,
11 WHICHEVER IS GREATER, OR BOTH THE IMPRISONMENT AND THE FINE.

12 SEC. 356L. (1) A PERSON WHO COMMITS THEFT OF PROPERTY,
13 OTHER THAN RETAIL FRAUD IN THE FIRST OR SECOND DEGREE AS PROVIDED
14 IN SECTIONS 356C AND 356D, IS GUILTY OF THEFT IN THE FIFTH
15 DEGREE.

16 (2) THEFT IN THE FIFTH DEGREE IS A MISDEMEANOR PUNISHABLE BY
17 IMPRISONMENT FOR NOT MORE THAN 90 DAYS OR A FINE OF NOT MORE THAN
18 \$500.00 OR 3 TIMES THE VALUE OF THE PROPERTY STOLEN, WHICHEVER IS
19 GREATER, OR BOTH THE IMPRISONMENT AND THE FINE.

20 SEC. 356M. FOR THE PURPOSES OF SECTIONS 356H TO 356L, THE
21 VALUE OF PROPERTY STOLEN IN THEFTS COMMITTED PURSUANT TO A SCHEME
22 OR COURSE OF CONDUCT, WHETHER THE THEFTS ARE FROM THE SAME PERSON
23 OR SEVERAL PERSONS, MAY BE AGGREGATED IN DETERMINING THE DEGREE
24 OF THE OFFENSE.

25 Section 2. Sections 218, 356, 356a, 357, 360, 362, and 363
26 of Act No. 328 of the Public Acts of 1931, being sections

1 750.218, 750.356, 750.356a, 750.357, 750.360, 750.362, and
2 750.363 of the Michigan Compiled Laws, are repealed.