

HOUSE BILL No. 4363

March 7, 1989, Introduced by Reps. Clack, Bartnik, Weeks, DeMars and Pitoniak and referred to the Committee on Judiciary.

A bill to amend chapter VIII of Act No. 175 of the Public Acts of 1927, entitled as amended
"The code of criminal procedure,"
as amended, being sections 768.1 to 768.36 of the Michigan Compiled Laws, by adding section 20b.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Chapter VIII of Act No. 175 of the Public Acts
2 of 1927, as amended, being sections 768.1 to 768.36 of the
3 Michigan Compiled Laws, is amended by adding section 20b to read
4 as follows:

5 CHAPTER VIII

6 SEC. 20B. (1) IT IS AN AFFIRMATIVE DEFENSE TO A CHARGE
7 UNDER SECTION 110 OF THE MICHIGAN PENAL CODE, ACT NO. 328 OF THE
8 PUBLIC ACTS OF 1931, BEING SECTION 750.110 OF THE MICHIGAN
9 COMPILED LAWS, THAT THE DEFENDANT ENTERED THE DWELLING OR OTHER

1 BUILDING WITH THE PERMISSION OF THE OWNER, OCCUPANT, OR AGENT OF
2 THE OWNER OR OCCUPANT, OR WITH PERMISSION FROM A PERSON HAVING
3 LAWFUL CONTROL OF THE DWELLING OR OTHER BUILDING. A DEFENDANT
4 WHO PROPOSES TO OFFER EVIDENCE IN HIS OR HER DEFENSE THAT HE OR
5 SHE ENTERED THE DWELLING OR OTHER BUILDING WITH PERMISSION SHALL
6 FILE AND SERVE NOTICE OF THE DEFENSE, IN WRITING, UPON THE COURT
7 AND THE PROSECUTING ATTORNEY. THE NOTICE SHALL BE SERVED NOT
8 LESS THAN 14 DAYS BEFORE THE DATE SET FOR TRIAL AND SHALL CONTAIN
9 ALL OF THE FOLLOWING INFORMATION:

10 (A) THE NAME AND ADDRESS OF EACH PERSON WHO GRANTED THE
11 DEFENDANT PERMISSION TO ENTER THE DWELLING OR OTHER BUILDING. IF
12 THE NAME OR ADDRESS OF A PERSON WHO GRANTED PERMISSION IS NOT
13 KNOWN AND CANNOT BE OBTAINED BY THE DEFENDANT, THE NOTICE SHALL
14 CONTAIN A DESCRIPTION OF THE PERSON IN AS MUCH DETAIL AS IS KNOWN
15 BY THE DEFENDANT.

16 (B) THE DATE WHEN THE DEFENDANT OBTAINED PERMISSION TO ENTER
17 THE DWELLING OR OTHER BUILDING.

18 (C) A STATEMENT OF THE CIRCUMSTANCES UNDER WHICH THE
19 DEFENDANT OBTAINED PERMISSION TO ENTER THE DWELLING OR OTHER
20 BUILDING.

21 (2) A PROSECUTING ATTORNEY WHO PROPOSES TO OFFER TESTIMONY
22 TO REBUT THE DEFENSE THAT THE DEFENDANT ENTERED THE DWELLING OR
23 OTHER BUILDING WITH PERMISSION SHALL FILE AND SERVE A NOTICE OF
24 REBUTTAL, IN WRITING, UPON THE COURT AND THE DEFENDANT. THE
25 NOTICE SHALL BE SERVED NOT LESS THAN 7 DAYS BEFORE THE DATE SET
26 FOR TRIAL, AND SHALL CONTAIN THE NAME AND ADDRESS OF EACH
27 REBUTTAL WITNESS.

1 (3) THE DEFENDANT AND THE PROSECUTING ATTORNEY SHALL
2 PROMPTLY DISCLOSE TO THE COURT AND TO THE OTHER PARTY THE NAME
3 AND ADDRESS OF EACH ADDITIONAL WITNESS WHO MAY BE CALLED TO
4 ESTABLISH OR TO REBUT THE DEFENSE OF ENTRY WITH PERMISSION. AN
5 ADDITIONAL WITNESS SHALL NOT TESTIFY UNLESS BOTH OF THE FOLLOWING
6 CIRCUMSTANCES EXIST:

7 (A) THE PARTY FILED A MOTION WITH PROPER NOTICE TO INCLUDE
8 THE WITNESS.

9 (B) THE NAME OR ADDRESS OF THE WITNESS WAS NOT AVAILABLE
10 WHEN THE NOTICE REQUIRED BY SUBSECTION (1) OR (2) WAS FILED, AND
11 THE NAME OR ADDRESS COULD NOT HAVE BEEN OBTAINED BY THE EXERCISE
12 OF DUE DILIGENCE.

13 (4) THE COURT SHALL EXCLUDE EVIDENCE OFFERED BY THE
14 DEFENDANT TO ESTABLISH THE DEFENSE OF ENTRY WITH PERMISSION,
15 UNLESS THE DEFENDANT FILED AND SERVED A PROPER NOTICE AS REQUIRED
16 UNDER SUBSECTIONS (1) AND (3).

17 (5) THE COURT SHALL EXCLUDE EVIDENCE OFFERED BY THE PROSE-
18 CUTING ATTORNEY TO REBUT THE DEFENSE OF ENTRY WITH PERMISSION,
19 UNLESS THE PROSECUTING ATTORNEY FILED AND SERVED A PROPER NOTICE
20 AS REQUIRED UNDER SUBSECTIONS (2) AND (3).

21 Section 2. This amendatory act shall not take effect unless
22 Senate Bill No. ____ or House Bill No. 4362 (request
23 no. 01115'89) of the 85th Legislature is enacted into law.