



# HOUSE BILL No. 4199

January 30, 1995, Introduced by Reps. Bush, Nye, Profit and Hill and referred to the Committee on Judiciary and Civil Rights.

A bill to amend sections 2952 and 2953 of Act No. 236 of the Public Acts of 1961, entitled as amended "Revised judicature act of 1961," section 2952 as added by Act No. 276 of the Public Acts of 1984 and section 2953 as added by Act No. 50 of the Public Acts of 1988, being sections 600.2952 and 600.2953 of the Michigan Compiled Laws.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 2952 and 2953 of Act No. 236 of the  
2 Public Acts of 1961, section 2952 as added by Act No. 276 of the  
3 Public Acts of 1984 and section 2953 as added by Act No. 50 of  
4 the Public Acts of 1988, being sections 600.2952 and 600.2953 of  
5 the Michigan Compiled Laws, are amended to read as follows:

6 Sec. 2952. (1) Exclusive of any penal sanctions ~~which~~  
7 THAT may apply, ~~any person~~ AN INDIVIDUAL who ~~makes~~ DOES BOTH

1 OF THE FOLLOWING IS SUBJECT TO THE PENALTY PROVIDED IN

2 SUBSECTION (4):

3 (A) MAKES, draws, utters, or delivers ~~any~~ A check, draft,  
4 or order for the payment of money upon ~~any~~ A bank or other  
5 depository, ~~or person~~ INDIVIDUAL, firm, or corporation ~~—~~  
6 ~~which~~ THAT refuses to honor the check, draft, or order for lack  
7 of funds or credit to pay or because the maker has no account  
8 with the drawee. ~~, and who fails~~

9 (B) FAILS to pay the amount of the DISHONORED check, draft,  
10 or order, PLUS A \$25.00 PROCESSING FEE, in cash as provided in  
11 subsections (2) and (3). ~~shall be liable for the penalty pro-~~  
12 ~~vided in subsection (4).~~

13 (2) ~~Any~~ A payee may make a written demand for payment of a  
14 check, draft, or order of the type specified in subsection (1),  
15 which demand shall be delivered to the maker by certified mail,  
16 return receipt requested, and delivery restricted to the  
17 addressee. The text of the written demand shall be as follows:

18 "On       (date)       a check drawn by you for \$           was  
19 returned to us dishonored for [ ] not sufficient funds  
20 [ ] no account. If you do not pay to us, within 30  
21 days ~~of~~ AFTER the time you receive this notice, the  
22 full amount of the check, AND A \$25.00 PROCESSING FEE,  
23 in cash, we have the right to bring an action against  
24 you for ~~2 times~~ the amount of the dishonored check  
25 (\$          ); PLUS DAMAGES OF EITHER 2 TIMES THE AMOUNT  
26 OF THE DISHONORED CHECK or ~~\$50.00~~ \$100.00, whichever

1 is greater; AND COSTS OF \$250.00, or to make a criminal  
2 complaint against you. If you do pay to us, within 30  
3 days ~~of~~ AFTER the time you receive this notice, the  
4 full amount of the check AND THE \$25.00 PROCESSING FEE  
5 in cash, we will not take further action against  
6 you.".

7 (3) If the maker fails to pay the amount of the check,  
8 draft, or order AND A \$25.00 PROCESSING FEE in cash to the payee  
9 within 30 days ~~of~~ AFTER receipt of the written demand for pay-  
10 ment made pursuant to subsection (2), the maker ~~shall be~~ IS  
11 liable for the penalty provided in subsection (4).

12 (4) Except as otherwise provided in this subsection and sub-  
13 section (5), a maker who fails to make payment pursuant to sub-  
14 section (3) ~~shall be~~ IS liable to the payee, ~~including~~ IN  
15 ADDITION TO the amount of the check, draft, or order, for damages  
16 of ~~double~~ EITHER 2 TIMES the amount of the check, draft, or  
17 order ~~, which damages shall be not less than \$50.00, and not~~  
18 ~~more than \$500.00, unless justice would not be served by an award~~  
19 ~~of double damages and would be served by an award of a lesser~~  
20 ~~amount. If the amount of the check is over \$500.00, the maker~~  
21 ~~shall only be liable for the amount of the check. OR \$100.00,~~  
22 WHICHEVER IS GREATER, AND COSTS OF \$250.00.

23 (5) If, before the trial of an action brought pursuant to  
24 this section, the maker pays to the payee in cash the amount of  
25 the dishonored check, draft, or order AND THE \$25.00 PROCESSING  
26 FEE plus reasonable costs ~~, such costs~~ THAT SHALL not ~~to~~  
27 exceed ~~\$50.00~~ \$250.00, subsection (4) ~~shall~~ DOES not apply.

1 (6) An action under this section may be brought in the small  
2 claims division of the district court, if it does not exceed the  
3 jurisdiction of the small claims division, or in any other appro-  
4 priate court. If the amount of the check exceeds the jurisdic-  
5 tion of the small claims division, the action may still be  
6 brought in the small claims division, but the amount of damages  
7 awarded shall not exceed the jurisdiction of the small claims  
8 division.

9 (7) If, subsequent to an action brought pursuant to this  
10 section, a criminal prosecution arising out of the same transac-  
11 tion is brought, a judgment in favor of a plaintiff payee ~~shall~~  
12 ~~be~~ IS void, and ~~any~~ money paid pursuant to the judgment shall  
13 be ordered repaid to the defendant maker. If a criminal prosecu-  
14 tion arising out of the same transaction is brought before or  
15 during an action brought pursuant to this section, the action  
16 shall be dismissed.

17 Sec. 2953. (1) In addition to ~~any~~ penal sanction, a  
18 person who commits an act for which he or she could be charged  
19 with the crime of retail fraud in the first or second degree, as  
20 defined in sections 356c and 356d of the Michigan ~~Penal Code~~  
21 PENAL CODE, Act No. 328 of the Public Acts of 1931, being sec-  
22 tions 750.356c and 750.356d of the Michigan Compiled Laws, ~~shall~~  
23 ~~be~~ IS liable to the merchant who is the victim of the act for  
24 the full retail price of unrecovered property or recovered prop-  
25 erty that is not in salable condition, and a civil penalty of  
26 ~~+0~~ EITHER 4 times the retail price of the property ~~, but not~~

1 ~~less than \$40.00 and not more than~~ OR \$100.00, WHICHEVER IS  
2 GREATER.

3 (2) The merchant who is the victim of retail fraud in the  
4 first or second degree, or an agent of the merchant, may make a  
5 written demand for payment of the amount for which the person who  
6 committed the act is liable under subsection (1). Except for a  
7 sole proprietorship, a member of management, other than the ini-  
8 tial detaining person, shall evaluate the validity of the accusa-  
9 tion that the person committed the act and shall approve the  
10 accusation in writing before a written demand for payment is  
11 issued. The demand for payment shall be delivered to the person  
12 from whom payment is demanded in person or by certified mail,  
13 return receipt requested, and delivery restricted to the  
14 addressee. The text of the written demand shall be as follows:

15 "We have cause to believe that on \_\_\_\_\_ (date) you com-  
16 mitted retail fraud in the first ~~degree~~ or second degree by  
17 \_\_\_\_\_ (description of action and personal property) in our  
18 store. If, within 30 days ~~of~~ AFTER the time you receive this  
19 notice, you return the property in salable condition or pay to us  
20 \$\_\_\_\_\_, which represents the full retail price/remaining balance  
21 of the full retail price of the property, plus an amount of ~~+0-~~  
22 EITHER 4 times the retail price of the property, ~~but not less~~  
23 ~~than \$40.00 and not more than~~ OR \$100.00, WHICHEVER IS GREATER,  
24 equaling a total amount of \$\_\_\_\_\_, we will not take further civil  
25 action against you for this incident.

26 If you fail to comply with this demand, we have the right to  
27 bring an action against you in court for \$\_\_\_\_\_, which represents

1 the full retail price/remaining balance of the full retail price  
2 of the property; a ~~\$200.00~~ civil penalty OF EITHER 4 TIMES THE  
3 RETAIL PRICE OF THE PROPERTY OR \$100.00, WHICHEVER IS GREATER;  
4 and ~~our reasonable costs , not to exceed \$50.00~~ OF \$250.00;  
5 equaling a total amount of \$\_\_\_\_\_."

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

9 "You are (your minor child is) accused of  
10 retail fraud. Michigan law allows the merchant to  
11 ask in writing that you return or pay for the mer-  
12 chandise and pay an amount of \$\_\_\_\_\_. If you  
13 do, no further civil action will be taken against  
14 you. This civil action has no effect on possible  
15 criminal action.

16 You do not have to respond to this letter if  
17 you are innocent or choose not to respond.  
18 However, if you do not respond, the merchant may  
19 then sue you in small claims court. Both you and  
20 the merchant will state your case in your own words  
21 without lawyers. The decision of the small claims  
22 court is final and cannot be appealed.

23 If you wish to be represented by a lawyer, you  
24 may ask that the case against you be heard by the  
25 district court. You and the merchant may be

1 represented by a lawyer and have the right to  
2 appeal to a higher court.

3 Questions regarding court procedures can be  
4 answered by the clerk of the district court."

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

9 (5) A person who commits an act described in subsection (1)  
10 and who fails to comply with a written demand under  
11 subsection (2) ~~shall be~~ IS liable to the merchant for the full  
12 retail price of the property, unless the property was recovered  
13 in salable condition, plus a civil penalty of ~~-\$200.00~~ OF EITHER  
14 4 TIMES THE RETAIL PRICE OF THE PROPERTY OR \$100.00, WHICHEVER IS  
15 GREATER, and ~~reasonable costs not exceeding \$50.00~~ OF  
16 \$250.00.

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

21 (7) An action under this section may be brought in the small  
22 claims division of the district court or in any other court of  
23 competent jurisdiction. If the amount demanded exceeds the  
24 jurisdiction of the small claims division, the action may still

1 be brought in the small claims division, but the amount recovered  
2 shall not exceed the jurisdiction of the small claims division.

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

9 (9) A merchant may recover the amount for which a person is  
10 civilly liable under this section only if a ~~formal police report~~  
11 ~~is filed with the prosecuting attorney or municipal attorney~~  
12 VERIFIED WRITTEN REPORT IS FILED WITH A LOCAL LAW ENFORCEMENT  
13 AGENCY THAT HAS JURISDICTION OF THE LOCATION WHERE THE VIOLATION  
14 TOOK PLACE, WHICH REPORT SETS FORTH FACTS alleging that the  
15 person has committed retail fraud in the first or second degree  
16 or violated a local ordinance substantially corresponding to  
17 section 218, 356, 356c, or 356d of the Michigan penal code, Act  
18 No. 328 of the Public Acts of 1931, being sections 750.218,  
19 750.356, 750.356c, and 750.356d of the Michigan Compiled Laws,  
20 regardless of the outcome of any criminal action.

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

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

3       Section 2. This amendatory act shall take effect October 1,  
4 1995.

5       Section 3. This amendatory act shall not take effect unless  
6 Senate Bill No. \_\_\_\_\_ or House Bill No. 4198 (request  
7 no. 01803'95) of the 88th Legislature is enacted into law.