

# Legislative Analysis



## **FRAUD AND DECEPTION: AVOIDING PAYMENT FOR SERVICES**

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**House Bill 4864**  
**Sponsor: Rep. Wayne Schmidt**

**House Bill 4865**  
**Sponsor: Rep. Roy Schmidt**

**Committee: Commerce**  
**Complete to 9-17-12**

### **A SUMMARY OF HOUSE BILLS 4864 & 4865 AS INTRODUCED 7-2-11**

House Bill 4864 would amend the Penal Code to make it a crime to intentionally avoid paying for certain services, including the holding of property under a rental agreement. (Proposed MCL 750.296)

House Bill 4865 would amend the Code of Criminal Procedure to make complementary amendments to sentencing guideline provisions. (MCL 777.16o)

#### **House Bill 4864**

##### Description of Offenses

The bill would make it a crime for a person to knowingly do any of the following with the intent to avoid payment for any service:

- Securing performance of the service by deception, threat, or false token.
- Having control over the disposition of services of another to which he or she is not entitled, diverting the other's services to his or her own benefit, or diverting the other's services to the benefit of another person not entitled.
- Having control of personal property under a written rental agreement and then holding the property beyond the expiration of the rental period without the effective consent of the owner of the property, thereby depriving the owner of the property of its use in further rentals.
- Securing the performance of a service by agreeing to provide compensation and, after the service is rendered, failing to make payment after receiving notice demanding payment.

Whether such conduct constituted a felony or a misdemeanor, and the severity of the punishment, would depend on the value of the property involved and whether the offender had prior convictions. This will be described in more detail later.

##### Rebuttable Presumptions

It would be a rebuttable presumption that the person intended to avoid payment if any of the following applied:

- The person absconded without paying for the service or expressly refused to pay for the service in circumstances where payment is ordinarily made immediately upon the rendering of the service.
- The person failed to make payment under a service agreement within ten days after receiving a notice demanding payment.
- The person returned property held under a rental agreement after the expiration of the rental agreement and failed to pay the applicable rental charge for the property within ten days after the date on which the person received a notice demanding payment.
- The person failed to return the property held under a rental agreement within five days after receiving a notice demanding return, if the property was valued at less than \$1,500; and within three days, if the property is valued at \$1,500 or more.

Where notices demanding payment are involved, notice would have to be provided in writing; sent by registered or certified mail with return receipt requested, or by telegram with report of delivery requested; and addressed to the person at the address shown on the rental agreement or service agreement. If notice met these requirements, it would be a rebuttable presumption that the notice was received not later than five days after it had been sent.

### Punishment

The bill contains the following provisions regarding punishment for offenses.

- If the property had a value of \$20,000 or more, the person would be guilty of a felony punishable by imprisonment for not more than 10 years and/or a fine of not more than \$15,000 or three times the value of the property involved, whichever is greater. This would be a D felony in the sentencing guidelines.
- If the property has a value of \$1,000 or more but less than \$20,000, then the person would be guilty of a felony punishable by imprisonment for not more than five years and/or a fine of not more than \$10,000 or three times the value of the property involved, whichever is greater. This would be a E felony in the sentencing guidelines.
- If the property has a value of \$200 or more but less than \$1,000, then the person would be guilty of a misdemeanor punishable by imprisonment for not more than one year and/or a fine of not more than \$2,000 or three times the value of the property involved, whichever is greater
- If the property has a value of less than \$200, the person would be guilty of a misdemeanor punishable by imprisonment for not more than 93 days and/or a fine of not more than \$500 or three times the value of the property involved, whichever is greater.

### Impact of Prior Convictions

Sentences would be enhanced based on prior convictions. A person convicted of the lesser felony and has two or more prior convictions could be subject to the penalties for the higher felony (as long as the prior convictions did not include cases involving under \$200 in value). Further, a person convicted of the higher misdemeanor and has one or more prior convictions could be subject to the penalties associated with the lesser felony (as long as the prior convictions did not include cases involving under \$200 in value). A person convicted of the lesser misdemeanor who has prior convictions could be subject to the penalties for the higher misdemeanor.

### Aggregation of Separate Incidents

The values of property involved in separate incidents as part of a course of conduct within any 12-month period could be aggregated to determine the total value of property involved.

### Prior Convictions: Prosecutor's Role

A prosecuting attorney who intends to seek an enhanced sentence based on a defendant's prior convictions must include on the complaint and information a statement listing the prior conviction(s). The existence of the convictions would be determined by the court, without a jury, at sentencing or at a separate hearing for that purpose before sentencing. The existence of a prior conviction could be established by any evidence relevant for that purpose, including a copy of the judgment of conviction; a transcript of a prior trial, plea taking, or sentencing; information in a presentence report; or a defendant's statement.

### Prior Convictions

If the sentence for a conviction is enhanced by one or more prior convictions, those prior convictions could not be used to further enhance the sentence of the conviction under Sections 10, 11, or 12 of Chapter IX of the Code of Criminal Procedure.

## **FISCAL IMPACT:**

To the extent that the bill's provisions result in additional felony and misdemeanor convictions, it could increase costs on state and local correctional systems. The average cost of prison incarceration in a state facility is roughly \$34,000 per prisoner per year, a figure that includes various fixed administrative and operational costs. The costs of local incarceration in a county jail and of misdemeanor probation supervision vary by jurisdiction. State costs of parole and felony probation supervision, exclusive of the cost of electronic tether, average about \$2,300 per supervised offender per year. Any increase in penal fine revenues would increase funding for local libraries, which are the constitutionally-designated recipients of those revenues.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.