

HOUSE BILL No. 4864

July 27, 2011, Introduced by Reps. Wayne Schmidt, Roy Schmidt, Clemente, Haugh, Foster and Lori and referred to the Committee on Judiciary.

A bill to amend 1931 PA 328, entitled
"The Michigan penal code,"
(MCL 750.1 to 750.568) by adding section 296.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 296. (1) A PERSON SHALL NOT KNOWINGLY DO ANY OF THE
2 FOLLOWING WITH THE INTENT TO AVOID PAYMENT FOR ANY SERVICE:

3 (A) SECURE PERFORMANCE OF THE SERVICE BY DECEPTION, THREAT, OR
4 FALSE TOKEN.

5 (B) HAVING CONTROL OVER THE DISPOSITION OF SERVICES OF ANOTHER
6 TO WHICH HE OR SHE IS NOT ENTITLED, DIVERT THE OTHER'S SERVICES TO
7 HIS OR HER OWN BENEFIT OR TO THE BENEFIT OF ANOTHER PERSON NOT
8 ENTITLED.

9 (C) HAVING CONTROL OF PERSONAL PROPERTY UNDER A WRITTEN RENTAL
10 AGREEMENT, HOLD THE PROPERTY BEYOND THE EXPIRATION OF THE RENTAL
11 PERIOD WITHOUT THE EFFECTIVE CONSENT OF THE OWNER OF THE PROPERTY,

1 THEREBY DEPRIVING THE OWNER OF THE PROPERTY OF ITS USE IN FURTHER
2 RENTALS.

3 (D) SECURE THE PERFORMANCE OF THE SERVICE BY AGREEING TO
4 PROVIDE COMPENSATION AND, AFTER THE SERVICE IS RENDERED, FAIL TO
5 MAKE PAYMENT AFTER RECEIVING NOTICE DEMANDING PAYMENT.

6 (2) IT IS A REBUTTABLE PRESUMPTION UNDER THIS SECTION THAT THE
7 PERSON INTENDED TO AVOID PAYMENT IF ANY OF THE FOLLOWING APPLY:

8 (A) THE PERSON ABSCONDED WITHOUT PAYING FOR THE SERVICE OR
9 EXPRESSLY REFUSED TO PAY FOR THE SERVICE IN CIRCUMSTANCES WHERE
10 PAYMENT IS ORDINARILY MADE IMMEDIATELY UPON THE RENDERING OF THE
11 SERVICE.

12 (B) THE PERSON FAILED TO MAKE PAYMENT UNDER A SERVICE
13 AGREEMENT WITHIN 10 DAYS AFTER RECEIVING A NOTICE DEMANDING
14 PAYMENT.

15 (C) THE PERSON RETURNED PROPERTY HELD UNDER A RENTAL AGREEMENT
16 AFTER THE EXPIRATION OF THE RENTAL AGREEMENT AND FAILED TO PAY THE
17 APPLICABLE RENTAL CHARGE FOR THE PROPERTY WITHIN 10 DAYS AFTER THE
18 DATE ON WHICH THE PERSON RECEIVED A NOTICE DEMANDING PAYMENT.

19 (D) THE PERSON FAILED TO RETURN THE PROPERTY HELD UNDER A
20 RENTAL AGREEMENT AS FOLLOWS:

21 (i) WITHIN 5 DAYS AFTER RECEIVING A NOTICE DEMANDING RETURN, IF
22 THE PROPERTY IS VALUED AT LESS THAN \$1,500.00.

23 (ii) WITHIN 3 DAYS AFTER RECEIVING A NOTICE DEMANDING RETURN,
24 IF THE PROPERTY IS VALUED AT \$1,500.00 OR MORE.

25 (3) FOR PURPOSES OF SUBSECTIONS (1) (D) AND (2) (B) AND (D),
26 NOTICE SHALL BE PROVIDED IN WRITING, SENT BY REGISTERED OR
27 CERTIFIED MAIL WITH RETURN RECEIPT REQUESTED OR BY TELEGRAM WITH

1 REPORT OF DELIVERY REQUESTED, AND ADDRESSED TO THE PERSON AT HIS OR
2 HER ADDRESS SHOWN ON THE RENTAL AGREEMENT OR SERVICE AGREEMENT.

3 (4) IF WRITTEN NOTICE IS GIVEN IN ACCORDANCE WITH SUBSECTION
4 (3), IT IS A REBUTTABLE PRESUMPTION THAT THE NOTICE WAS RECEIVED
5 NOT LATER THAN 5 DAYS AFTER IT WAS SENT.

6 (5) IF ANY OF THE FOLLOWING APPLY, THE PERSON IS GUILTY OF A
7 FELONY PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 10 YEARS OR A
8 FINE OF NOT MORE THAN \$15,000.00 OR 3 TIMES THE VALUE OF THE
9 PROPERTY INVOLVED, WHICHEVER IS GREATER, OR BOTH IMPRISONMENT AND A
10 FINE:

11 (A) THE PROPERTY HAS A VALUE OF \$20,000.00 OR MORE.

12 (B) THE PERSON VIOLATES SUBSECTION (6) (A) AND HAS 2 OR MORE
13 PRIOR CONVICTIONS FOR COMMITTING OR ATTEMPTING TO COMMIT AN OFFENSE
14 UNDER THIS SECTION. FOR PURPOSES OF THIS SUBDIVISION, HOWEVER, A
15 PRIOR CONVICTION DOES NOT INCLUDE A CONVICTION FOR A VIOLATION OR
16 ATTEMPTED VIOLATION OF SUBSECTION (7) (B) OR (8).

17 (6) IF ANY OF THE FOLLOWING APPLY, THE PERSON IS GUILTY OF A
18 FELONY PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 5 YEARS OR A
19 FINE OF NOT MORE THAN \$10,000.00 OR 3 TIMES THE VALUE OF THE
20 PROPERTY, WHICHEVER IS GREATER, OR BOTH IMPRISONMENT AND A FINE:

21 (A) THE PROPERTY INVOLVED HAS A VALUE OF \$1,000.00 OR MORE BUT
22 LESS THAN \$20,000.00.

23 (B) THE PERSON VIOLATES SUBSECTION (7) (A) AND HAS 1 OR MORE
24 PRIOR CONVICTIONS FOR COMMITTING OR ATTEMPTING TO COMMIT AN OFFENSE
25 UNDER THIS SECTION. FOR PURPOSES OF THIS SUBDIVISION, HOWEVER, A
26 PRIOR CONVICTION DOES NOT INCLUDE A CONVICTION FOR A VIOLATION OR
27 ATTEMPTED VIOLATION OF SUBSECTION (7) (B) OR (8).

1 (7) IF ANY OF THE FOLLOWING APPLY, THE PERSON IS GUILTY OF A
2 MISDEMEANOR PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 1 YEAR OR
3 A FINE OF NOT MORE THAN \$2,000.00 OR 3 TIMES THE VALUE OF THE
4 PROPERTY INVOLVED, WHICHEVER IS GREATER, OR BOTH IMPRISONMENT AND A
5 FINE:

6 (A) THE PROPERTY INVOLVED HAS A VALUE OF \$200.00 OR MORE BUT
7 LESS THAN \$1,000.00.

8 (B) THE PERSON VIOLATES SUBSECTION (8) AND HAS 1 OR MORE PRIOR
9 CONVICTIONS FOR COMMITTING OR ATTEMPTING TO COMMIT AN OFFENSE UNDER
10 THIS SECTION OR A LOCAL ORDINANCE SUBSTANTIALLY CORRESPONDING TO
11 THIS SECTION.

12 (8) IF THE PROPERTY INVOLVED HAS A VALUE OF LESS THAN \$200.00,
13 THE PERSON IS GUILTY OF A MISDEMEANOR PUNISHABLE BY IMPRISONMENT
14 FOR NOT MORE THAN 93 DAYS OR A FINE OF NOT MORE THAN \$500.00 OR 3
15 TIMES THE VALUE OF THE PROPERTY INVOLVED, WHICHEVER IS GREATER, OR
16 BOTH IMPRISONMENT AND A FINE.

17 (9) THE VALUES OF PROPERTY INVOLVED IN SEPARATE INCIDENTS
18 PURSUANT TO A SCHEME OR COURSE OF CONDUCT WITHIN ANY 12-MONTH
19 PERIOD MAY BE AGGREGATED TO DETERMINE THE TOTAL VALUE OF PROPERTY
20 INVOLVED.

21 (10) IF THE PROSECUTING ATTORNEY INTENDS TO SEEK AN ENHANCED
22 SENTENCE BASED UPON THE DEFENDANT HAVING 1 OR MORE PRIOR
23 CONVICTIONS, THE PROSECUTING ATTORNEY SHALL INCLUDE ON THE
24 COMPLAINT AND INFORMATION A STATEMENT LISTING THE PRIOR CONVICTION
25 OR CONVICTIONS. THE EXISTENCE OF THE DEFENDANT'S PRIOR CONVICTION
26 OR CONVICTIONS SHALL BE DETERMINED BY THE COURT, WITHOUT A JURY, AT
27 SENTENCING OR AT A SEPARATE HEARING FOR THAT PURPOSE BEFORE

1 SENTENCING. THE EXISTENCE OF A PRIOR CONVICTION MAY BE ESTABLISHED
2 BY ANY EVIDENCE RELEVANT FOR THAT PURPOSE, INCLUDING, BUT NOT
3 LIMITED TO, 1 OR MORE OF THE FOLLOWING:

4 (A) A COPY OF THE JUDGMENT OF CONVICTION.

5 (B) A TRANSCRIPT OF A PRIOR TRIAL, PLEA TAKING, OR SENTENCING.

6 (C) INFORMATION CONTAINED IN A PRESENTENCE REPORT.

7 (D) THE DEFENDANT'S STATEMENT.

8 (11) IF THE SENTENCE FOR A CONVICTION UNDER THIS SECTION IS
9 ENHANCED BY 1 OR MORE PRIOR CONVICTIONS, THOSE PRIOR CONVICTIONS
10 SHALL NOT BE USED TO FURTHER ENHANCE THE SENTENCE FOR THE
11 CONVICTION UNDER SECTION 10, 11, OR 12 OF CHAPTER IX OF THE CODE OF
12 CRIMINAL PROCEDURE, 1927 PA 175, MCL 769.10, 769.11, AND 769.12.