

Legislative Analysis



OBTAINING SERVICE OR PROPERTY BY FRAUD OR DECEIT

Mary Ann Cleary, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bills 4501-4502

Sponsor: Rep. Wayne Schmidt

Committee: Criminal Justice

Complete to 6-5-13

A SUMMARY OF HOUSE BILLS 4501-4502 AS INTRODUCED 4-9-13

House Bill 4501 would (1) prohibit certain conduct in respect to obtaining services or personal property with the intent to avoid payment, (2) establish a rebuttable presumption that the person intended to avoid payment, and (3) provide penalties for a violation.

House Bill 4502 would place the maximum terms of imprisonment in the sentencing guidelines.

House Bill 4501 would add a new section to the Michigan Penal Code (MCL 750.296) to prohibit a person from knowingly doing any of the following with the intent to avoid payment for any service:

- Secure performance of the service by deception, threat, or false token.
- If having control over the disposition of services of another to which he or she is not entitled, divert the other's services for personal benefit or to another who is not entitled to the benefit.
- If having control of personal property under a written rental agreement, hold the property beyond the expiration of the rental period without the effective consent of the owner of the property and thereby depriving the owner of its use in further rentals.
- Secure the performance of the service by agreeing to provide compensation and, after the service is rendered, fail to make payment after receiving written notice demanding payment.

The bill would create a rebuttable presumption that the person intended to avoid payment if certain conditions were met. These conditions include absconding without paying for the service or expressly refusing to pay for the service in circumstances where payment is ordinarily made immediately upon the rendering of service; failing to make payment under a service agreement within 10 days after receiving a written notice demanding payment; returning property held under a rental agreement after the agreement expired and failing to pay the applicable rental charge within 10 days after receiving a written notice demanding payment; and failing to return property held under a rental agreement within time frames specified in the bill.

Penalties

Penalties for violations would be based on the value of property involved and whether the person had prior convictions for this new offense. If the prosecuting attorney intends to seek an enhanced penalty based on prior convictions, the prosecutor would have to include on the

complaint and information a list of the prior conviction or convictions. The existence of any prior convictions would be determined by the court as specified in the bill, without a jury, at sentencing or at a separate hearing for that purpose prior to sentencing. If a sentence for a conviction under the bill was enhanced by one or more prior convictions, those prior convictions could not also be used to further enhance the sentence for the conviction otherwise provided for in sections of the Code of Criminal Procedure that allow for enhanced sentences for habitual offenders.

Misdemeanor offenses

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| Value of property less than \$200 | Imprisonment for not more than 93 days and/or a fine of not more than \$500 or 3 times the value of the property involved, whichever is greater |
| **Value of property \$200-\$999; or, **Value of property less than \$200 with 1 or more prior offenses under bill or corresponding local ordinance | Imprisonment for not more than 1 year and/or a fine of not more than \$2,000 or 3 times the value of the property involved, whichever is greater |

Felony offenses

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| **Value of property \$1000-\$19,999; or, ** Value of property \$200-\$999 with 1 or more prior offenses under bill (excluding convictions for property valued less than \$200) | Imprisonment for not more than 5 years and/or a fine of not more than \$10,000 or 3 times the value of the property, whichever is greater |
| **Value of property \$20,000 or more; or, **Value of property \$1000-\$19,999 with 2 or more prior convictions under bill (excluding convictions for property valued less than \$200) | Imprisonment for not more than 10 years and/or a fine of not more than \$15,000 or 3 times the value of the property involved, whichever is greater |

House Bill 4502 would amend the Code of Criminal Procedure (MCL 777.16o) to specify that obtaining service having value of \$20,000 or more, or having value of \$1,000 or more but less than \$20,000 with prior convictions would be a Class D felony against property with a maximum term of imprisonment of 10 years. Obtaining service having value of \$1,000 or more but less than \$20,000, or having value of \$200 or more but less than \$1,000 with prior convictions would have a five-year maximum term of imprisonment. The bill is tie-barred to House Bill 4501.

FISCAL IMPACT:

A fiscal analysis is in process.

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Robin Risko

■ 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.