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State of Minnesota

HOUSE OF REPRESENTATIVES

EIGHTY-SEVENTH SESSION

H. F. No. **2333**

02/16/2012 Authored by Swedzinski, Cornish and Johnson

The bill was read for the first time and referred to the Committee on Public Safety and Crime Prevention Policy and Finance

02/27/2012 Adoption of Report: Pass and re-referred to the Committee on Civil Law

1.1 A bill for an act
1.2 relating to public safety; specifically including theft of motor fuel in the theft
1.3 crime; creating a permissive inference regarding theft of motor fuel; modifying
1.4 the drive-off gas civil liability law; amending Minnesota Statutes 2010, sections
1.5 171.175; 332.32; 604.15, subdivision 3, by adding a subdivision; 609.52,
1.6 subdivisions 1, 2.

1.7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.8 Section 1. Minnesota Statutes 2010, section 171.175, is amended to read:

1.9 **171.175 SUSPENSION; THEFT OF ~~GASOLINE~~ MOTOR FUEL OFFENSE.**

1.10 Subdivision 1. **Theft of ~~gasoline~~ motor fuel.** The commissioner of public safety
1.11 shall suspend for 30 days the license of any person convicted or juvenile adjudicated
1.12 delinquent for theft of ~~gasoline~~ motor fuel under section 609.52, subdivision 2, clause (1).

1.13 Subd. 2. **Definition.** For the purposes of this section, "~~gasoline~~" "motor fuel" has
1.14 the meaning given it in section ~~296A.01~~ 604.15, subdivision ~~23~~ 1.

1.15 Sec. 2. Minnesota Statutes 2010, section 332.32, is amended to read:

1.16 **332.32 EXCLUSIONS.**

1.17 (a) The term "collection agency" shall not include persons whose collection
1.18 activities are confined to and are directly related to the operation of a business other than
1.19 that of a collection agency such as, but not limited to banks when collecting accounts
1.20 owed to the banks and when the bank will sustain any loss arising from uncollectible
1.21 accounts, abstract companies doing an escrow business, real estate brokers, public officers,
1.22 persons acting under order of a court, lawyers, trust companies, insurance companies,
1.23 credit unions, savings associations, loan or finance companies unless they are engaged in
1.24 asserting, enforcing or prosecuting unsecured claims which have been purchased from

any person, firm, or association when there is recourse to the seller for all or part of the claim if the claim is not collected.

(b) The term "collection agency" shall not include a trade association performing services authorized by section 604.15, subdivision 4a, but the trade association in performing the services may not engage in any conduct that would be prohibited for a collection agency under section 332.37.

Sec. 3. Minnesota Statutes 2010, section 604.15, subdivision 3, is amended to read:

Subd. 3. **Notice of nonpayment.** Notice of nonpayment that includes a citation to this section and a description of the penalties contained in it shall be sent by the retailer to the owner by regular mail, supported by an affidavit of service by mailing, to the address indicated by records on the vehicle under section 86B.401 or 168.346. The notice must include a signed statement by the employee who reported the act describing what the employee observed and the license number of the motor vehicle, ~~if known~~. Failure of the owner to receive a notice is not a defense to liability under this section.

An affidavit of service by mailing must be retained by the retailer.

Sec. 4. Minnesota Statutes 2010, section 604.15, is amended by adding a subdivision to read:

Subd. 4a. **Trade association services.** A trade association may, on behalf of a member retailer, give and receive notices authorized by this section and collect payments for motor fuel and the service charge specified under subdivision 2.

Sec. 5. Minnesota Statutes 2010, section 609.52, subdivision 1, is amended to read:

Subdivision 1. **Definitions.** In this section:

(1) "Property" means all forms of tangible property, whether real or personal, without limitation including documents of value, electricity, gas, water, corpses, domestic animals, dogs, pets, fowl, and heat supplied by pipe or conduit by municipalities or public utility companies and articles, as defined in clause (4), representing trade secrets, which articles shall be deemed for the purposes of Extra Session Laws 1967, chapter 15 to include any trade secret represented by the article.

(2) "Movable property" is property whose physical location can be changed, including without limitation things growing on, affixed to, or found in land.

(3) "Value" means the retail market value at the time of the theft, or if the retail market value cannot be ascertained, the cost of replacement of the property within a reasonable time after the theft, or in the case of a theft or the making of a copy of an article

representing a trade secret, where the retail market value or replacement cost cannot be ascertained, any reasonable value representing the damage to the owner which the owner has suffered by reason of losing an advantage over those who do not know of or use the trade secret. For a check, draft, or other order for the payment of money, "value" means the amount of money promised or ordered to be paid under the terms of the check, draft, or other order. For a theft committed within the meaning of subdivision 2, clause (5), items (i) and (ii), if the property has been restored to the owner, "value" means the value of the use of the property or the damage which it sustained, whichever is greater, while the owner was deprived of its possession, but not exceeding the value otherwise provided herein. For a theft committed within the meaning of subdivision 2, clause (9), if the property has been restored to the owner, "value" means the rental value of the property, determined at the rental rate contracted by the defendant or, if no rental rate was contracted, the rental rate customarily charged by the owner for use of the property, plus any damage that occurred to the property while the owner was deprived of its possession, but not exceeding the total retail value of the property at the time of rental.

(4) "Article" means any object, material, device or substance, including any writing, record, recording, drawing, sample specimen, prototype, model, photograph, microorganism, blueprint or map, or any copy of any of the foregoing.

(5) "Representing" means describing, depicting, containing, constituting, reflecting or recording.

(6) "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that:

(i) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use, and

(ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

(7) "Copy" means any facsimile, replica, photograph or other reproduction of an article, and any note, drawing, or sketch made of or from an article while in the presence of the article.

(8) "Property of another" includes property in which the actor is co-owner or has a lien, pledge, bailment, or lease or other subordinate interest, property transferred by the actor in circumstances which are known to the actor and which make the transfer fraudulent as defined in section 513.44, property possessed pursuant to a short-term rental contract, and property of a partnership of which the actor is a member, unless the actor and the victim are husband and wife. It does not include property in which the actor asserts in

good faith a claim as a collection fee or commission out of property or funds recovered, or by virtue of a lien, setoff, or counterclaim.

(9) "Services" include but are not limited to labor, professional services, transportation services, electronic computer services, the supplying of hotel accommodations, restaurant services, entertainment services, advertising services, telecommunication services, and the supplying of equipment for use including rental of personal property or equipment.

(10) "Motor vehicle" means a self-propelled device for moving persons or property or pulling implements from one place to another, whether the device is operated on land, rails, water, or in the air.

(11) "Motor fuel" has the meaning given in section 604.15, subdivision 1.

(12) "Retailer" has the meaning given in section 604.15, subdivision 1.

EFFECTIVE DATE. This section is effective August 1, 2012, and applies to crimes committed on or after that date.

Sec. 6. Minnesota Statutes 2010, section 609.52, subdivision 2, is amended to read:

Subd. 2. **Acts constituting theft.** Whoever does any of the following commits theft and may be sentenced as provided in subdivision 3:

(1) intentionally and without claim of right takes, uses, transfers, conceals or retains possession of movable property of another without the other's consent and with intent to deprive the owner permanently of possession of the property including, but not limited to, by driving a motor vehicle from the premises of a motor fuel retailer without having paid for motor fuel dispensed into the vehicle.

Proof that the driver of a motor vehicle into which motor fuel was dispensed drove the vehicle from the premises of the retailer without having paid for the fuel permits the factfinder to infer that the driver acted intentionally and without claim of right, and that the driver intended to deprive the retailer permanently of possession of the fuel. This paragraph does not apply if: (i) the vehicle or the vehicle's license plate has been reported stolen before the theft of the fuel; or (ii) payment has been made to the retailer within 30 days of the receipt of notice of nonpayment under section 604.15; or

(2) with or without having a legal interest in movable property, intentionally and without consent, takes the property out of the possession of a pledgee or other person having a superior right of possession, with intent thereby to deprive the pledgee or other person permanently of the possession of the property; or

(3) obtains for the actor or another the possession, custody, or title to property of or performance of services by a third person by intentionally deceiving the third person

5.1 with a false representation which is known to be false, made with intent to defraud, and
5.2 which does defraud the person to whom it is made. "False representation" includes
5.3 without limitation:

5.4 (i) the issuance of a check, draft, or order for the payment of money, except a forged
5.5 check as defined in section 609.631, or the delivery of property knowing that the actor is
5.6 not entitled to draw upon the drawee therefor or to order the payment or delivery thereof; or

5.7 (ii) a promise made with intent not to perform. Failure to perform is not evidence of
5.8 intent not to perform unless corroborated by other substantial evidence; or

5.9 (iii) the preparation or filing of a claim for reimbursement, a rate application, or a
5.10 cost report used to establish a rate or claim for payment for medical care provided to a
5.11 recipient of medical assistance under chapter 256B, which intentionally and falsely states
5.12 the costs of or actual services provided by a vendor of medical care; or

5.13 (iv) the preparation or filing of a claim for reimbursement for providing treatment
5.14 or supplies required to be furnished to an employee under section 176.135 which
5.15 intentionally and falsely states the costs of or actual treatment or supplies provided; or

5.16 (v) the preparation or filing of a claim for reimbursement for providing treatment or
5.17 supplies required to be furnished to an employee under section 176.135 for treatment or
5.18 supplies that the provider knew were medically unnecessary, inappropriate, or excessive;
5.19 or

5.20 (4) by swindling, whether by artifice, trick, device, or any other means, obtains
5.21 property or services from another person; or

5.22 (5) intentionally commits any of the acts listed in this subdivision but with intent
5.23 to exercise temporary control only and:

5.24 (i) the control exercised manifests an indifference to the rights of the owner or the
5.25 restoration of the property to the owner; or

5.26 (ii) the actor pledges or otherwise attempts to subject the property to an adverse
5.27 claim; or

5.28 (iii) the actor intends to restore the property only on condition that the owner pay a
5.29 reward or buy back or make other compensation; or

5.30 (6) finds lost property and, knowing or having reasonable means of ascertaining the
5.31 true owner, appropriates it to the finder's own use or to that of another not entitled thereto
5.32 without first having made reasonable effort to find the owner and offer and surrender the
5.33 property to the owner; or

5.34 (7) intentionally obtains property or services, offered upon the deposit of a sum of
5.35 money or tokens in a coin or token operated machine or other receptacle, without making
5.36 the required deposit or otherwise obtaining the consent of the owner; or

(8) intentionally and without claim of right converts any article representing a trade secret, knowing it to be such, to the actor's own use or that of another person or makes a copy of an article representing a trade secret, knowing it to be such, and intentionally and without claim of right converts the same to the actor's own use or that of another person. It shall be a complete defense to any prosecution under this clause for the defendant to show that information comprising the trade secret was rightfully known or available to the defendant from a source other than the owner of the trade secret; or

(9) leases or rents personal property under a written instrument and who:

(i) with intent to place the property beyond the control of the lessor conceals or aids or abets the concealment of the property or any part thereof; or

(ii) sells, conveys, or encumbers the property or any part thereof without the written consent of the lessor, without informing the person to whom the lessee sells, conveys, or encumbers that the same is subject to such lease or rental contract with intent to deprive the lessor of possession thereof; or

(iii) does not return the property to the lessor at the end of the lease or rental term, plus agreed-upon extensions, with intent to wrongfully deprive the lessor of possession of the property; or

(iv) returns the property to the lessor at the end of the lease or rental term, plus agreed-upon extensions, but does not pay the lease or rental charges agreed upon in the written instrument, with intent to wrongfully deprive the lessor of the agreed-upon charges.

For the purposes of items (iii) and (iv), the value of the property must be at least \$100.

Evidence that a lessee used a false, fictitious, or not current name, address, or place of employment in obtaining the property or fails or refuses to return the property or pay the rental contract charges to lessor within five days after written demand for the return has been served personally in the manner provided for service of process of a civil action or sent by certified mail to the last known address of the lessee, whichever shall occur later, shall be evidence of intent to violate this clause. Service by certified mail shall be deemed to be complete upon deposit in the United States mail of such demand, postpaid and addressed to the person at the address for the person set forth in the lease or rental agreement, or, in the absence of the address, to the person's last known place of residence; or

(10) alters, removes, or obliterates numbers or symbols placed on movable property for purpose of identification by the owner or person who has legal custody or right to possession thereof with the intent to prevent identification, if the person who alters, removes, or obliterates the numbers or symbols is not the owner and does not have the permission of the owner to make the alteration, removal, or obliteration; or

(11) with the intent to prevent the identification of property involved, so as to deprive the rightful owner of possession thereof, alters or removes any permanent serial number, permanent distinguishing number or manufacturer's identification number on personal property or possesses, sells or buys any personal property knowing or having reason to know that the permanent serial number, permanent distinguishing number or manufacturer's identification number has been removed or altered; or

(12) intentionally deprives another of a lawful charge for cable television service by:

(i) making or using or attempting to make or use an unauthorized external connection outside the individual dwelling unit whether physical, electrical, acoustical, inductive, or other connection; or by

(ii) attaching any unauthorized device to any cable, wire, microwave, or other component of a licensed cable communications system as defined in chapter 238. Nothing herein shall be construed to prohibit the electronic video rerecording of program material transmitted on the cable communications system by a subscriber for fair use as defined by Public Law 94-553, section 107; or

(13) except as provided in clauses (12) and (14), obtains the services of another with the intention of receiving those services without making the agreed or reasonably expected payment of money or other consideration; or

(14) intentionally deprives another of a lawful charge for telecommunications service by:

(i) making, using, or attempting to make or use an unauthorized connection whether physical, electrical, by wire, microwave, radio, or other means to a component of a local telecommunication system as provided in chapter 237; or

(ii) attaching an unauthorized device to a cable, wire, microwave, radio, or other component of a local telecommunication system as provided in chapter 237.

The existence of an unauthorized connection is prima facie evidence that the occupier of the premises:

(A) made or was aware of the connection; and

(B) was aware that the connection was unauthorized;

(15) with intent to defraud, diverts corporate property other than in accordance with general business purposes or for purposes other than those specified in the corporation's articles of incorporation; or

(16) with intent to defraud, authorizes or causes a corporation to make a distribution in violation of section 302A.551, or any other state law in conformity with it; or

8.1 (17) takes or drives a motor vehicle without the consent of the owner or an
8.2 authorized agent of the owner, knowing or having reason to know that the owner or an
8.3 authorized agent of the owner did not give consent.

8.4 **EFFECTIVE DATE.** This section is effective August 1, 2012, and applies to crimes
8.5 committed on or after that date.