

Upon the completion of the transfer authorized by this section, the legislative auditor shall conduct an examination of the transfer proceedings, prepare specific findings as to the propriety of fiscal correctness thereof and transmit these findings to the state board of investment, Minneapolis retirement fund board, the board of directors of the Minnesota state retirement system, the board of trustees of the public employees retirement association, the board of trustees of the teachers retirement association, the committee on public employees and pensions of the senate, the committee on governmental operations of the house of representatives, and the legislative commission on pensions and retirement. If the legislative auditor finds any error in the transfer proceedings, the parties to the transfer shall immediately cause the error to be corrected.

The Minneapolis retirement fund board shall pay any costs arising from the transfer authorized by this subdivision if the costs would not have been incurred in the absence of the transfer.

The established date for the transfer of assets and liabilities shall be June 30, 1981, unless the state board of investment and the Minneapolis employees retirement fund board jointly agree that the transfer authorized by this section should not be consummated on that date, whereupon the established date for the transfer of assets and liabilities shall be June 30, 1982.

**Sec. 11. REVISOR OF STATUTES; INSTRUCTIONS.**

In the next edition of Minnesota Statutes, the revisor of statutes shall remove the term "Minneapolis municipal employee retirement fund" wherever it appears and replace it with the term "Minneapolis employees retirement fund".

**Sec. 12. REPEALER.**

Minnesota Statutes 1980, Section 422A.05, Subdivision 3, is repealed.

**Sec. 13. EFFECTIVE DATE.**

Sections 1 and 2 are effective July 1, 1981. Sections 3 to 12 are effective upon compliance with Minnesota Statutes, Section 645.021.

Approved May 29, 1981

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**CHAPTER 299 — H.F.No. 305**

*An act relating to crimes; specifying the crime of theft of services; conforming the definition of trade secret in the law proscribing theft to the definition of trade secret in the uniform trade secrets act; amending Minnesota Statutes 1980, Section 609.52.*

Changes or additions are indicated by underline, deletions by strikeout.

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

Section 1. Minnesota Statutes 1980, Section 609.52, is amended to read:

**609.52 THEFT.**

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 such 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 he has suffered by reason of losing an advantage over those who do not know of or use the trade secret. For a theft committed within the meaning of subdivision 2, clause (5), (a) and (b), 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.

(4) "Article" means any object, material, device or substance, including any writing, record, recording, drawing, sample specimen, prototype, model, photograph, micro-organism, 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 the whole or any portion of any formula, pattern, device or compilation of any scientific or technical information which is secret, is of value and has not been published or otherwise become a matter of general public knowledge; and an article representing a trade secret shall be presumed to be secret and not to have been published or otherwise become a matter of general public knowledge when the owner marks it as a trade secret and takes measures to preserve its secrecy and to prevent it from becoming

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available to persons other than those selected by the owner to have controlled access thereto for purposes of the owner's business 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 ~~such~~ 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, 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, set-off, 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.

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 his consent and with intent to deprive the owner permanently of possession of the property; or

(2) Having a legal interest in movable property, intentionally and without consent, takes ~~such~~ 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 himself or another the possession, custody or title to property of or performance of services by a third person by intentionally deceiving him with a false representation which is known to be false, made with intent to defraud, and which does defraud the person to whom it is made. "False representation" includes without limitation:

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(a) The issuance of a check, draft, or order for the payment of money or the delivery of property knowing that he is not entitled to draw upon the drawee therefor or to order the payment or delivery thereof; or

(b) A promise made with intent not to perform. Failure to perform is not evidence of intent not to perform unless corroborated by other substantial evidence; or

(c) The unauthorized use of a credit card, credit plate, charge plate, or other identification device issued by an organization to a person for use in purchasing goods or services on credit; or

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

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

(5) Intentionally commits any of the acts listed in this subdivision but with intent to exercise temporary control only and;

(a) The control exercised manifests an indifference to the rights of the owner or the restoration of the property to him; or

(b) He pledges or otherwise attempts to subject the property to an adverse claim; or

(c) He intends to restore the property only on condition that the owner pay a reward or buy back or make other compensation; or

(6) Finds lost property and, knowing or having reasonable means of ascertaining the true owner, appropriates it to his own use or to that of another not entitled thereto without first having made reasonable effort to find the owner and offer and surrender the property to him; or

(7) Intentionally obtains property or services, offered upon the deposit of a sum of money or tokens in a coin or token operated machine or other receptacle, without making 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 his 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 his 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 him from a source other than the owner of the trade secret; or

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(9) Leases or rents personal property under a written instrument and who with intent to place ~~such~~ the property beyond the control of the lessor conceals or aids or abets the concealment of ~~such~~ the property or any part thereof, or any lessee of ~~such~~ the property who sells, conveys or encumbers ~~such~~ the property or any part thereof without the written consent of the lessor, without informing the person to whom he sells, conveys, or encumbers that the same is subject to such lease and with intent to deprive the lessor of possession thereof. Evidence that a lessee used a false or fictitious name or address in obtaining ~~such~~ the property or fails or refuses to return ~~such~~ the property to lessor within five days after written demand for ~~such~~ 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 ~~such~~ the person at the address for ~~such~~ the person set forth in the lease or rental agreement, or, in the absence of ~~such~~ the address, to ~~such~~ 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 with knowledge 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 re-recording 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

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(13) Except as provided in paragraph (12), 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.

Subd. 3. SENTENCE. Whoever commits theft may be sentenced as follows:

(1) To imprisonment for not more than ten years or to payment of a fine of not more than \$10,000, or both, if the value of the property or services stolen exceeds \$2,500; or

(2) To imprisonment for not more than five years or to payment of a fine of not more than \$5,000, or both, if the value of the property or services stolen is more than \$150 but not more than \$2,500; or

(3) To imprisonment for not more than five years or to payment of a fine of not more than \$5,000, or both, notwithstanding the value of the property or services stolen is not more than \$150, if any of the following circumstances exist:

(a) The property is taken from the person of another or from a corpse, or grave or coffin containing a corpse; or

(b) The property taken is a record of a court or officer, or a writing, instrument or record kept, filed or deposited according to law with or in the keeping of any public officer or office; or

(c) The property is taken from a burning building or upon its removal therefrom, or from an area of destruction caused by civil disaster, riot, bombing, or the proximity of battle; or

(d) The property taken consists of public funds belonging to the state or to any political subdivision or agency thereof; or

(4) To imprisonment for not more than ten years or to payment of a fine of not more than \$10,000, or both, if the property stolen is an article representing a trade secret; or if the property stolen is an explosive or an incendiary device; or

(5) In all other cases where the value of the property or services stolen is \$150 or less, to imprisonment for not more than 90 days or to payment of a fine of not more than \$500, or both, provided, however, in any prosecution under clause (1), clause (2), clause (3)(a), (b) and (c), and clause (4), and clause (13) of subdivision 2 the value of the money or property received by the defendant in violation of any one or more of the above provisions within any six month period may be aggregated and the defendant charged accordingly in applying the provisions of this subdivision; provided that when two or more offenses are committed by the same person in two or more counties, the accused may be prosecuted in any county in which one of the offenses was committed for all of the offenses aggregated under this paragraph.

Approved May 29, 1981

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