

PRIMA FACIE EVIDENCE OF INTENT TO DEFRAUD

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House Bill 4894 (H-1) as referred to second committee

Sponsor: Rep. Greg VanWoerkom

1st Committee: Financial Services

2nd Committee: Judiciary

Complete to 7-13-21

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

House Bill 4894 would amend section 157w of the Michigan Penal Code to provide that certain circumstances or actions constitute prima facie evidence of an intent to defraud on the part of a person who uses a financial transaction device (e.g., a debit or credit card) to withdraw or transfer funds in excess of funds available in a deposit account or in an amount or frequency that exceeds account limits.

Section 157w currently provides that a person who so uses a financial transaction device knowingly and with an intent to defraud is guilty of a crime, with penalties that depend on the amount of the funds involved and whether the person has certain prior convictions under section 157w or an equivalent local ordinance.

Subject to an exception described below, the bill would provide that it is prima facie evidence of intent to defraud if a person fails to remedy a nonpayment within five days after receiving notice of nonpayment from a merchant or service provider to whom payment is owed or from the holder of a *deposit account* for which the person had used a *financial transaction device* in violation of account limits on the frequency or amount of withdrawals or transfers or in an amount greater than the funds on deposit in the account.

Deposit account includes share, deposit, member, and savings accounts of *financial institutions*.

Financial institution means a bank, savings and loan association, or credit union and includes a corporation wholly owned by a financial institution or by the holding company parent of a financial institution.

Financial transaction device means any of the following:

- A debit card.
- An electronic funds transfer card.
- A credit card.
- A point-of-sale card.
- Any instrument, device, card, plate, code, account number, personal identification number, or a record or copy of a code, account number, or personal identification number or other means of access to a credit account or deposit account including through the use of cryptocurrency or distributed ledger technology, or a driver license or state identification card used to access a proprietary account, other than access originated solely by a paper instrument,

that can be used alone or in conjunction with another access device, to do any of the following:

- Obtain money, cash refund or credit account, credit, goods, services, or any other thing of value.
- Certify or guarantee to a person or business the availability to the deviceholder of funds on deposit to honor a draft or check payable to the order of that person or business.
- Provide the deviceholder access to a deposit account for the purpose of making deposits, withdrawing funds, transferring funds between deposit accounts, obtaining information pertaining to a deposit account, or making an electronic funds transfer.

However, the provisions of the bill described above would not apply to a person whose use of a financial transaction device was in compliance with a contract or agreement with a *financial institution*.

For purposes of this exception only, *financial institution* would not be defined as described above but instead would mean a state or nationally chartered bank or a state or federally chartered savings and loan association, savings bank, or credit union whose deposits are insured by an agency of the United States government and that maintains a principal office or branch office in Michigan under the laws of Michigan or of the United States.

Finally, the bill would provide that a notice of protest of payment due to insufficiency of funds or credit is admissible as proof of presentation, nonpayment, and protest and is prima facie evidence of both intent to defraud and knowledge of insufficient funds or credit.

MCL 750.157w

FISCAL IMPACT:

House Bill 4894 would not have a fiscal impact on any unit of state or local government.

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