

**SUBSTITUTE FOR
HOUSE BILL NO. 4894**

A bill to amend 1931 PA 328, entitled
"The Michigan penal code,"
by amending section 157w (MCL 750.157w), as amended by 1998 PA 312.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 157w. (1) A person who knowingly and with intent to
2 defraud uses a financial transaction device to withdraw or transfer
3 funds from a deposit account in violation of the contractual
4 limitations imposed on the amount or frequency of withdrawals or
5 transfers or in an amount exceeding the funds then on deposit in
6 the account is guilty of a crime as follows:

7 (a) A misdemeanor punishable by imprisonment for not more than
8 93 days or a fine of not more than \$500.00 or 3 times the amount of
9 funds withdrawn or transferred, whichever is greater, or both



1 imprisonment and a fine, if the amount of the funds withdrawn or
2 transferred is less than \$200.00.

3 (b) A misdemeanor punishable by imprisonment for not more than
4 1 year or a fine of not more than \$2,000.00 or 3 times the amount
5 of funds withdrawn or transferred, whichever is greater, or both
6 imprisonment and a fine, if any of the following apply:

7 (i) The amount of the funds withdrawn or transferred is \$200.00
8 or more but less than \$1,000.00.

9 (ii) The person violates subdivision (a) and has 1 or more
10 prior convictions for committing or attempting to commit an offense
11 under this section or a local ordinance substantially corresponding
12 to this section.

13 (c) A felony punishable by imprisonment for not more than 5
14 years or a fine of not more than \$10,000.00 or 3 times the amount
15 of funds withdrawn or transferred, whichever is greater, or both
16 imprisonment and a fine, if any of the following apply:

17 (i) The amount of the funds withdrawn or transferred is
18 \$1,000.00 or more but less than \$20,000.00.

19 (ii) The person violates subdivision (b) (i) and has 1 or more
20 prior convictions for committing or attempting to commit an offense
21 under this section. For purposes of this subparagraph, however, a
22 prior conviction does not include a conviction for a violation or
23 attempted violation of subdivision (a) or (b) (ii).

24 (d) A felony punishable by imprisonment for not more than 10
25 years or a fine of not more than \$15,000.00 or 3 times the amount
26 of funds withdrawn or transferred, whichever is greater, or both
27 imprisonment and a fine, if any of the following apply:

28 (i) The amount of funds withdrawn or transferred is \$20,000.00
29 or more.



1 (ii) The person violates subdivision (c) (i) and has 2 or more
2 prior convictions for committing or attempting to commit an offense
3 under this section. For purposes of this subparagraph, however, a
4 prior conviction does not include a conviction for a violation or
5 attempted violation of subdivision (a) or (b) (ii).

6 (2) The amounts of funds withdrawn or transferred in separate
7 incidents pursuant to a scheme or course of conduct within any 12-
8 month period may be aggregated to determine the total amount of
9 funds withdrawn or transferred.

10 (3) If the prosecuting attorney intends to seek an enhanced
11 sentence based upon the defendant having 1 or more prior
12 convictions, the prosecuting attorney shall include on the
13 complaint and information a statement listing the prior conviction
14 or convictions. The existence of the defendant's prior conviction
15 or convictions ~~shall~~**must** be determined by the court, without a
16 jury, at sentencing or at a separate hearing for that purpose
17 before sentencing. The existence of a prior conviction may be
18 established by any evidence relevant for that purpose, including,
19 but not limited to, 1 or more of the following:

- 20 (a) A copy of the judgment of conviction.
21 (b) A transcript of a prior trial, plea-taking, or sentencing.
22 (c) Information contained in a presentence report.
23 (d) The defendant's statement.
- 24 (4) If the sentence for a conviction under this section is
25 enhanced by 1 or more prior convictions, those prior convictions
26 shall not be used to further enhance the sentence for the
27 conviction pursuant to section 10, 11, or 12 of chapter IX of the
28 code of criminal procedure, 1927 PA 175, MCL 769.10, 769.11, and
29 769.12.



1 (5) Except as otherwise provided in this subsection, if a
2 person who used a financial transaction device in violation of the
3 contractual limitations imposed on the amount or frequency of
4 withdrawals or transfers or in an amount exceeding the funds then
5 on deposit in the account has received notice of nonpayment from
6 the holder of the deposit account, or from a merchant or service
7 provider to whom payment is owed, fails to remedy the nonpayment
8 within 5 days after receiving notice the failure is prima facie
9 evidence of intent to defraud. This subsection does not apply to a
10 person whose use of a financial transaction device is in compliance
11 with a contract or agreement with a financial institution. As used
12 in this subsection, "financial institution" means that term as
13 defined in section 4 of the Michigan strategic fund act, 1984 PA
14 270, MCL 125.2004.

15 (6) If payment is protested because of insufficiency of funds
16 or credit, the notice of protest is admissible as proof of
17 presentation, nonpayment, and protest, and is prima facie evidence
18 of intent to defraud, and of knowledge of insufficient funds or
19 credit.

