

HOUSE BILL NO. 4894

May 20, 2021, Introduced by Rep. VanWoerkom and referred to the Committee on Financial Services.

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

1 the account is guilty of a crime as follows:

2 (a) A misdemeanor punishable by imprisonment for not more than
3 93 days or a fine of not more than \$500.00 or 3 times the amount of
4 funds withdrawn or transferred, whichever is greater, or both
5 imprisonment and a fine, if the amount of the funds withdrawn or
6 transferred is less than \$200.00.

7 (b) A misdemeanor punishable by imprisonment for not more than
8 1 year or a fine of not more than \$2,000.00 or 3 times the amount
9 of funds withdrawn or transferred, whichever is greater, or both
10 imprisonment and a fine, if any of the following apply:

11 (i) The amount of the funds withdrawn or transferred is \$200.00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

13 (ii) The person violates subdivision (a) and has 1 or more
14 prior convictions for committing or attempting to commit an offense
15 under this section or a local ordinance substantially corresponding
16 to this section.

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19 of funds withdrawn or transferred, whichever is greater, or both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

21 (i) The amount of the funds withdrawn or transferred is
22 \$1,000.00 or more but less than \$20,000.00.

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

28 (d) A felony punishable by imprisonment for not more than 10
29 years or a fine of not more than \$15,000.00 or 3 times the amount

1 of funds withdrawn or transferred, whichever is greater, or both
2 imprisonment and a fine, if any of the following apply:

3 (i) The amount of funds withdrawn or transferred is \$20,000.00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

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

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

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

24 (a) A copy of the judgment of conviction.

25 (b) A transcript of a prior trial, plea-taking, or sentencing.

26 (c) Information contained in a presentence report.

27 (d) The defendant's statement.

28 (4) If the sentence for a conviction under this section is
29 enhanced by 1 or more prior convictions, those prior convictions

1 shall not be used to further enhance the sentence for the
2 conviction pursuant to section 10, 11, or 12 of chapter IX of the
3 code of criminal procedure, 1927 PA 175, MCL 769.10, 769.11, and
4 769.12.

5 (5) The failure of a person who used a financial transaction
6 device in violation of the contractual limitations imposed on the
7 amount or frequency of withdrawals or transfers or in an amount
8 exceeding the funds then on deposit in the account and who has
9 received notice of nonpayment from the holder of the deposit
10 account to remedy the nonpayment within 5 days after receiving
11 notice is prima facie evidence of intent to defraud.

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