

Act No. 312  
Public Acts of 1998  
Approved by the Governor  
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STATE OF MICHIGAN  
89TH LEGISLATURE  
REGULAR SESSION OF 1998

**Introduced by Reps. Nye, Curtis, Profit, Dalman, Green, Kukuk and Walberg**

# **ENROLLED HOUSE BILL No. 4445**

AN ACT to amend 1931 PA 328, entitled "An act to revise, consolidate, codify and add to the statutes relating to crimes; to define crimes and prescribe the penalties therefor; to provide for restitution under certain circumstances; to provide for the competency of evidence at the trial of persons accused of crime; to provide immunity from prosecution for certain witnesses appearing at such trials; and to repeal certain acts and parts of acts inconsistent with or contravening any of the provisions of this act," by amending sections 74, 77, 131, 157s, 157w, 174, 177, 178, 181, 218, and 219a (MCL 750.74, 750.77, 750.131, 750.157s, 750.157w, 750.174, 750.177, 750.178, 750.181, 750.218, and 750.219a), section 131 as amended by 1984 PA 277, section 157s as amended and section 157w as added by 1987 PA 276, and section 219a as amended by 1996 PA 330.

*The People of the State of Michigan enact:*

Sec. 74. (1) A person who willfully and maliciously burns any personal property, other than personal property specified in section 72 or 73, owned by himself or herself or another person is guilty of a crime as follows:

(a) If the value of the personal property burned or intended to be burned is less than \$200.00, the person is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$500.00 or 3 times the value of the personal property burned or intended to be burned, whichever is greater, or both imprisonment and a fine.

(b) If any of the following apply, the person is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$2,000.00 or 3 times the value of the personal property burned or intended to be burned, whichever is greater, or both imprisonment and a fine:

(i) The value of the personal property burned or intended to be burned is \$200.00 or more but less than \$1,000.00.

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

(c) If any of the following apply, the person is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than \$10,000.00 or 3 times the value of the personal property burned or intended to be burned, whichever is greater, or both imprisonment and a fine:

(i) The value of the personal property burned or intended to be burned is \$1,000.00 or more but less than \$20,000.00.

(ii) The person violates subdivision (b)(i) and has 1 or more prior convictions for violating or attempting to violate this section. For purposes of this subparagraph, however, a prior conviction does not include a conviction for a violation or attempted violation of subdivision (a) or (b)(i).

(d) If any of the following apply, the person is guilty of a felony punishable by imprisonment for not more than 10 years or a fine of not more than \$15,000.00 or 3 times the value of the personal property burned or intended to be burned, whichever is greater, or both imprisonment and a fine:

(i) The personal property burned or intended to be burned has a value of \$20,000.00 or more.

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

(2) The values of personal property burned or intended to be burned in separate incidents pursuant to a scheme or course of conduct within any 12-month period may be aggregated to determine the total value of personal property burned or intended to be burned.

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

- (a) A copy of the judgment of conviction.
- (b) A transcript of a prior trial, plea-taking, or sentencing.
- (c) Information contained in a presentence report.
- (d) The defendant's statement.

(4) If the sentence for a conviction under this section is enhanced by 1 or more prior convictions, those prior convictions shall not be used to further enhance the sentence for the conviction pursuant to section 10, 11, or 12 of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.10, 769.11, and 769.12.

Sec. 77. (1) A person who uses, arranges, places, devises, or distributes an inflammable, combustible, or explosive material, liquid, or substance or any device in or near a building or property described in section 72, 73, 74, or 75 with intent to willfully and maliciously set fire to or burn the building or property or who aids, counsels, induces, persuades, or procures another to do so is guilty of a crime as follows:

(a) If the property intended to be burned is personal or real property, or both, with a combined value less than \$200.00, the person is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$500.00 or 3 times the combined value of the property intended to be burned, whichever is greater, or both imprisonment and a fine.

(b) If any of the following apply, the person is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$2,000.00 or 3 times the combined value of the property intended to be burned, whichever is greater, or both imprisonment and a fine:

(i) The property intended to be burned is personal or real property, or both, with a combined value of \$200.00 or more but less than \$1,000.00.

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

(c) If any of the following apply, the person is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than \$10,000.00 or 3 times the combined value of the property intended to be burned, whichever is greater, or both imprisonment and a fine:

(i) The property intended to be burned is personal or real property, or both, with a combined value of \$1,000.00 or more but less than \$20,000.00.

(ii) The person violates subdivision (b)(i) and has 1 or more prior convictions for violating or attempting to violate this section. For purposes of this subparagraph, however, a prior conviction does not include a conviction for a violation or attempted violation of subdivision (a) or (b)(i).

(d) If any of the following apply, the person is guilty of a felony punishable by imprisonment for not more than 10 years or a fine of not more than \$15,000.00 or 3 times the combined value of the property intended to be burned, whichever is greater, or both imprisonment and a fine:

(i) The property is personal or real property, or both, with a combined value of \$20,000.00 or more.

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

conviction for committing or attempting to commit an offense for a violation or attempted violation of subdivision (a) or (b)(i).

(2) The combined value of property intended to be burned in separate incidents pursuant to a scheme or course of conduct within any 12-month period may be aggregated to determine the total value of property intended to be burned.

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

- (a) The total value of property intended to be burned.
- (b) A transcript of a prior trial, plea-taking, or sentencing.
- (c) Information contained in a presentence report.
- (d) The defendant's statement.

(4) If the sentence for a conviction under this section is enhanced by 1 or more prior convictions, those prior convictions shall not be used to further enhance the sentence for the conviction pursuant to section 10, 11, or 12 of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.10, 769.11, and 769.12.

Sec. 131. (1) A person shall not make, draw, utter, or deliver any check, draft, or order for the payment of money, to apply on account or otherwise, upon any bank or other depository with intent to defraud and knowing at the time of the making, drawing, uttering, or delivering that the maker or drawer does not have sufficient funds in or credit with the bank or other depository to pay the check, draft, or order in full upon its presentation.

(2) A person shall not make, draw, utter, or deliver any check, draft, or order for the payment of money, to apply on account or otherwise, upon any bank or other depository with intent to defraud if the person does not have sufficient funds for the payment of the check, draft, or order when presentation for payment is made to the drawee. This subsection does not apply if the lack of funds is due to garnishment, attachment, levy, or other lawful cause and that fact was not known to the person when the person made, drew, uttered, or delivered the check, draft, or order.

(3) A person who violates this section is guilty of a crime as follows:

(a) If the amount payable in the check, draft, or order is less than \$100.00, as follows:

(i) For a first offense, a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$500.00, or both.

(ii) For an offense following 1 or more prior convictions under this section or a local ordinance substantially corresponding to this section, a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00, or both.

(b) If the amount payable in the check, draft, or order is \$100.00 or more but less than \$500.00, as follows:

(i) For a first or second offense, a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00 or 3 times the amount payable, whichever is greater, or both imprisonment and a fine.

(ii) For an offense following 2 or more prior convictions under this section, a felony punishable by imprisonment for not more than 2 years or a fine of not more than \$2,000.00, or both. For purposes of this subparagraph, however, a prior conviction does not include a conviction for a violation or attempted violation of subdivision (a).

(c) If the amount payable in the check, draft, or order is \$500.00 or more, a felony punishable by imprisonment for not more than 2 years or a fine of not more than \$2,000.00 or 3 times the amount payable, whichever is greater, or both imprisonment and a fine.

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

- (a) A copy of the judgment of conviction.
- (b) A transcript of a prior trial, plea-taking, or sentencing.
- (c) Information contained in a presentence report.
- (d) The defendant's statement.

(5) If the sentence for a conviction under this section is enhanced by 1 or more prior convictions, those prior convictions shall not be used to further enhance the sentence for the conviction pursuant to section 10, 11, or 12 of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.10, 769.11, and 769.12.

Sec. 157s. (1) A person who, for the purpose of obtaining goods, property, services, or anything of value, knowingly and with intent to defraud uses 1 or more financial transaction devices that have been revoked or canceled by the issuer of the device or devices, as distinguished from expired, and has received notice of the revocation or cancellation is guilty of a crime as follows:

(a) If the value of the goods, property, services, or anything of value is less than \$100.00, as follows:

(i) For a first offense, a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$500.00, or both.

(ii) For an offense following 1 or more prior convictions under this section or a local ordinance substantially corresponding to this section, a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00, or both.

(b) If the value of the goods, property, services, or anything of value is \$100.00 or more but less than \$500.00, as follows:

(i) For a first or second offense, a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00 or 3 times the aggregate value of the goods, property, services, or anything of value, whichever is greater, or both imprisonment and a fine.

(ii) For an offense following 2 or more prior convictions under this section, a felony punishable by imprisonment for not more than 2 years or a fine of not more than \$2,000.00, or both. For purposes of this subparagraph, however, a prior conviction does not include a conviction for a violation or attempted violation of subdivision (a).

(c) If the value of the goods, property, services, or anything of value is \$500.00 or more, a felony punishable by imprisonment for not more than 2 years or a fine of not more than \$2,000.00 or 3 times the aggregate value of the goods, property, services, or anything of value, whichever is greater, or both imprisonment and a fine.

(2) The values of goods, property, services, or things of value obtained in separate incidents pursuant to a scheme or course of conduct within any 12-month period may be aggregated to determine the total value of goods, property, services, or things of value obtained.

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

- (a) A copy of the judgment of conviction.
- (b) A transcript of a prior trial, plea-taking, or sentencing.
- (c) Information contained in a presentence report.
- (d) The defendant's statement.

(4) If the sentence for a conviction under this section is enhanced by 1 or more prior convictions, those prior convictions shall not be used to further enhance the sentence for the conviction pursuant to section 10, 11, or 12 of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.10, 769.11, and 769.12.

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) A copy of the judgment of conviction.

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

(c) Information contained in a presentence report.

(d) The defendant's statement.

(4) If the sentence for a conviction under this section is enhanced by 1 or more prior convictions, those prior convictions shall not be used to further enhance the sentence for the conviction pursuant to section 10, 11, or 12 of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.10, 769.11, and 769.12.

Sec. 174. (1) A person who as the agent, servant, or employee of another person, governmental entity within this state, or other legal entity or who as the trustee, bailee, or custodian of the property of another person, governmental entity within this state, or other legal entity fraudulently disposes of or converts to his or her own use, or takes or secretes with the intent to convert to his or her own use without the consent of his or her principal, any money or other personal property of his or her principal that has come to that person's possession or that is under his or her charge or control by virtue of his or her being an agent, servant, employee, trustee, bailee, or custodian, is guilty of embezzlement.

(2) If the money or personal property embezzled has a value of less than \$200.00, the person is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$500.00 or 3 times the value of the money or property embezzled, whichever is greater, or both imprisonment and a fine.

(3) If any of the following apply, the person is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$2,000.00 or 3 times the value of the money or property embezzled, whichever is greater, or both imprisonment and a fine:

(a) The money or personal property embezzled has a value of \$200.00 or more but less than \$1,000.00.

(b) The person violates subsection (2) and has 1 or more prior convictions for committing or attempting to commit an offense under this section or a local ordinance substantially corresponding to this section.

(4) If any of the following apply, the person is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than \$10,000.00 or 3 times the value of the money or property embezzled, whichever is greater, or both imprisonment and a fine:

(a) The money or personal property embezzled has a value of \$1,000.00 or more but less than \$20,000.00.

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

(5) If any of the following apply, the person is guilty of a felony punishable by imprisonment for not more than 10 years or a fine of not more than \$15,000.00 or 3 times the value of the money or property embezzled, whichever is greater, or both imprisonment and a fine:

(a) The money or personal property embezzled has a value of \$20,000.00 or more.

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

(6) Except as otherwise provided in this subsection, the values of money or personal property embezzled in separate incidents pursuant to a scheme or course of conduct within any 12-month period may be aggregated to determine the total value of money or personal property embezzled. If the scheme or course of conduct is directed against only 1 person, governmental entity within this state, or other legal entity, no time limit applies to aggregation under this subsection.

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

- (a) A copy of the judgment of conviction.
- (b) A transcript of a prior trial, plea-taking, or sentencing.
- (c) Information contained in a presentence report.
- (d) The defendant's statement.

(8) In a prosecution under this section, the failure, neglect, or refusal of the agent, servant, employee, trustee, bailee, or custodian to pay, deliver, or refund to his or her principal the money or property entrusted to his or her care upon demand is prima facie proof of intent to embezzle.

(9) If the sentence for a conviction under this section is enhanced by 1 or more prior convictions, those prior convictions shall not be used to further enhance the sentence for the conviction pursuant to section 10, 11, or 12 of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.10, 769.11, and 769.12.

Sec. 177. (1) A person shall not embezzle or fraudulently remove, conceal, or dispose of any personal property held by him or her subject to a chattel mortgage or written instrument intended to operate as a chattel mortgage, a lease or written instrument intended to operate as a lease, or a contract to purchase not yet fulfilled with intent to injure or defraud the mortgagee, lessor, or vendor under the contract or any assignee of the mortgagee, lessor, or vendor.

(2) If any of the following apply, the person is guilty of a felony punishable by imprisonment for not more than 10 years or a fine of not more than \$15,000.00 or 3 times the value of the property embezzled, removed, concealed, or disposed of, whichever is greater, or both imprisonment and a fine:

(a) The property embezzled, removed, concealed, or disposed of has a value of \$20,000.00 or more.

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

(3) If any of the following apply, the person is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than \$10,000.00 or 3 times the value of the property embezzled, removed, concealed, or disposed of, whichever is greater, or both imprisonment and a fine:

(a) The property embezzled, removed, concealed, or disposed of has a value of \$1,000.00 or more but less than \$20,000.00.

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

(4) If any of the following apply, the person is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$2,000.00 or 3 times the value of the property embezzled, removed, concealed, or disposed of, whichever is greater, or both imprisonment and a fine:

(a) The property embezzled, removed, concealed, or disposed of has a value of \$200.00 or more but less than \$1,000.00.

(b) The person violates subsection (5) and has 1 or more prior convictions for committing or attempting to commit an offense under this section or a local ordinance substantially corresponding to this section.

(5) If the property embezzled, removed, concealed, or disposed of has a value of less than \$200.00, the person is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$500.00 or 3 times the value of the property embezzled, removed, concealed, or disposed of, whichever is greater, or both imprisonment and a fine.

(6) Except as otherwise provided in this subsection, the values of property embezzled, removed, concealed, or disposed of in separate incidents pursuant to a scheme or course of conduct within any 12-month period may be aggregated to determine the total value of property embezzled, removed, concealed, or disposed of. If the scheme or course of conduct is directed against only 1 mortgagee, lessor, or vendor, no time limit applies to aggregation under this subsection.

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

- (a) A copy of the judgment of conviction.
- (b) A transcript of a prior trial, plea-taking, or sentencing.
- (c) Information contained in a presentence report.
- (d) The defendant's statement.

(8) If the sentence for a conviction under this section is enhanced by 1 or more prior convictions, those prior convictions shall not be used to further enhance the sentence for the conviction pursuant to section 10, 11, or 12 of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.10, 769.11, and 769.12.

Sec. 178. (1) A person shall not embezzle or fraudulently remove, conceal, or dispose of any personal property that has been mortgaged, leased, or purchased under a contract to purchase not yet fulfilled by another person knowing the personal property has been mortgaged, leased, or purchased and with the intent to injure or defraud the mortgagee, lessor, or vendor under the contract, or any assignee of the mortgagee, lessor, or vendor.

(2) If any of the following apply, the person is guilty of a felony punishable by imprisonment for not more than 10 years or a fine of not more than \$15,000.00 or 3 times the value of the property embezzled, removed, concealed, or disposed of, whichever is greater, or both imprisonment and a fine:

- (a) The property embezzled, removed, concealed, or disposed of has a value of \$20,000.00 or more.
- (b) The person violates subsection (3)(a) and has 2 or more prior convictions for committing or attempting to commit an offense under this section. For purposes of this subdivision, however, a prior conviction does not include a conviction for a violation or attempted violation of subsection (4)(b) or (5).

(3) If any of the following apply, the person is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than \$10,000.00 or 3 times the value of the property embezzled, removed, concealed, or disposed of, whichever is greater, or both imprisonment and a fine:

- (a) The property embezzled, removed, concealed, or disposed of has a value of \$1,000.00 or more but less than \$20,000.00.
- (b) The person violates subsection (4)(a) and has 1 or more prior convictions for committing or attempting to commit an offense under this section. For purposes of this subdivision, however, a prior conviction does not include a conviction for a violation or attempted violation of subsection (4)(b) or (5).

(4) If any of the following apply, the person is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$2,000.00 or 3 times the value of the property embezzled, removed, concealed, or disposed of, whichever is greater, or both imprisonment and a fine:

- (a) The property embezzled, removed, concealed, or disposed of has a value of \$200.00 or more but less than \$1,000.00.
- (b) The person violates subsection (5) and has 1 or more prior convictions for committing or attempting to commit an offense under this section or a local ordinance substantially corresponding to this section.

(5) If the property embezzled, removed, concealed, or disposed of has a value of less than \$200.00, the person is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$500.00 or 3 times the value of the property embezzled, removed, concealed, or disposed of, whichever is greater, or both imprisonment and a fine.

(6) Except as otherwise provided in this subsection, the values of property embezzled, removed, concealed, or disposed of in separate incidents pursuant to a scheme or course of conduct within any 12-month period may be aggregated to determine the total value of property embezzled, removed, concealed, or disposed of. If the scheme or course of conduct is directed against only 1 mortgagee, lessor, or vendor, no time limit applies to aggregation under this subsection.

(7) If the prosecuting attorney intends to seek an enhanced sentence based upon the defendant having 1 or more prior convictions, the prosecuting attorney shall include on the complaint and information a statement listing the prior

conviction or convictions. The existence of the defendant's prior conviction or convictions shall be determined by the court, without a jury, at sentencing or at a separate hearing for that purpose before sentencing. The existence of a prior conviction may be established by any evidence relevant for that purpose, including, but not limited to, 1 or more of the following:

- (a) A copy of the judgment of conviction.
- (b) A transcript of a prior trial, plea-taking, or sentencing.
- (c) Information contained in a presentence report.
- (d) The defendant's statement.

(8) If the sentence for a conviction under this section is enhanced by 1 or more prior convictions, those prior convictions shall not be used to further enhance the sentence for the conviction pursuant to section 10, 11, or 12 of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.10, 769.11, and 769.12.

Sec. 181. (1) An agent, servant, employee, trustee, bailee, custodian, attorney-at-law, collector, or other person who receives or collects in any manner money or other personal property that is partly the property of another person, governmental entity within this state, or other legal entity and partly the property of the agent, servant, employee, trustee, bailee, custodian, attorney-at-law, collector, or other person shall not embezzle, fraudulently dispose of, convert to his or her own use, or take or secrete with intent to embezzle or convert to his or her own use the money or personal property without the consent of the part owner of the money or personal property.

(2) If the money or personal property embezzled, disposed of, converted, taken, or secreted has a value of less than \$200.00, the person is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$500.00 or 3 times the value of the money or property embezzled, disposed of, converted, taken, or secreted, whichever is greater, or both imprisonment and a fine.

(3) If any of the following apply, the person is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$2,000.00 or 3 times the value of the money or property embezzled, disposed of, converted, taken, or secreted, whichever is greater, or both imprisonment and a fine:

(a) The money or personal property embezzled, disposed of, converted, taken, or secreted has a value of \$200.00 or more but less than \$1,000.00.

(b) The person violates subsection (2) and has 1 or more prior convictions for committing or attempting to commit an offense under this section or a local ordinance substantially corresponding to this section.

(4) If any of the following apply, the person is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than \$10,000.00 or 3 times the value of the money or property embezzled, disposed of, converted, taken, or secreted, whichever is greater, or both imprisonment and a fine:

(a) The money or personal property embezzled, disposed of, converted, taken, or secreted has a value of \$1,000.00 or more but less than \$20,000.00.

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

(5) If any of the following apply, the person is guilty of a felony punishable by imprisonment for not more than 10 years or a fine of not more than \$15,000.00 or 3 times the value of the money or property embezzled, disposed of, converted, taken, or secreted, whichever is greater, or both imprisonment and a fine:

(a) The money or personal property embezzled, disposed of, converted, taken, or secreted has a value of \$20,000.00 or more.

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

(6) Except as otherwise provided in this subsection, the values of money or property embezzled, disposed of, converted, taken, or secreted in separate incidents pursuant to a scheme or course of conduct within any 12-month period may be aggregated to determine the total value of money or personal property embezzled, disposed of, converted, taken, or secreted. If the scheme or course of conduct is directed against only 1 person, governmental entity within this state, or other legal entity, no time limit applies to aggregation under this subsection.

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



- (a) A copy of the judgment of conviction.
- (b) A transcript of a prior trial, plea-taking, or sentencing.
- (c) Information contained in a presentence report.
- (d) The defendant's statement.

(8) In a prosecution under this section, it is not a defense that the agent, servant, employee, trustee, bailee, custodian, attorney-at-law, collector, or other person was entitled to a compensation out of the money or personal property as compensation for collecting or receiving it for its owner, but it is not embezzlement by the agent, servant, employee, trustee, bailee, custodian, attorney-at-law, collector, or other person to retain his or her reasonable collection fee on the collection or any other valid interest he or she has in the money or personal property.

(9) In a prosecution under this section, the failure, neglect, or refusal of the agent, servant, employee, trustee, bailee, custodian, attorney-at-law, collector, or other person to pay, deliver, or refund to the proper person the money or personal property entrusted to his or her care, upon demand, is prima facie proof of intent to embezzle.

(10) If the sentence for a conviction under this section is enhanced by 1 or more prior convictions, those prior convictions shall not be used to further enhance the sentence for the conviction pursuant to section 10, 11, or 12 of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.10, 769.11, and 769.12.

Sec. 218. (1) A person who, with intent to defraud or cheat and by color of a false token or writing, by a false or bogus check or other written, printed, or engraved instrument, by counterfeit coin or metal that is intended to simulate a coin, or by any other false pretense does 1 or more of the following is guilty of a crime punishable as provided in this section:

- (a) Causes a person to grant, convey, assign, demise, lease, or mortgage land or an interest in land.
- (b) Obtains a person's signature on a forged written instrument.
- (c) Obtains from a person any money or personal property or the use of any instrument, facility, article, or other valuable thing or service.
- (d) By means of a false weight or measure obtains a larger amount or quantity of property than was bargained for.
- (e) By means of a false weight or measure sells or disposes of a smaller amount or quantity of property than was bargained for.

(2) If the land, interest in land, money, personal property, use of the instrument, facility, article, or valuable thing, service, larger amount obtained, or smaller amount sold or disposed of has a value of less than \$200.00, the person is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$500.00 or 3 times the value, whichever is greater, or both imprisonment and a fine.

(3) If any of the following apply, the person is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$2,000.00 or 3 times the value, whichever is greater, or both imprisonment and a fine:

(a) The land, interest in land, money, personal property, use of the instrument, facility, article, or valuable thing, service, larger amount obtained, or smaller amount sold or disposed of has a value of \$200.00 or more but less than \$1,000.00.

(b) The person violates subsection (2) and has 1 or more prior convictions for committing or attempting to commit an offense under this section or a local ordinance substantially corresponding to this section.

(4) If any of the following apply, the person is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than \$10,000.00 or 3 times the value, whichever is greater, or both imprisonment and a fine:

(a) The land, interest in land, money, personal property, use of the instrument, facility, article, or valuable thing, service, larger amount obtained, or smaller amount sold or disposed of has a value of \$1,000.00 or more but less than \$20,000.00.

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

(5) If any of the following apply, the person is guilty of a felony punishable by imprisonment for not more than 10 years or a fine of not more than \$15,000.00 or 3 times the value, whichever is greater, or both imprisonment and a fine:

(a) The land, interest in land, money, personal property, use of the instrument, facility, article, or valuable thing, service, larger amount obtained, or smaller amount sold or disposed of has a value of \$20,000.00 or more.

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

(6) The values of land, interest in land, money, personal property, use of the instrument, facility, article, or valuable thing, service, larger amount obtained, or smaller amount sold or disposed of in separate incidents pursuant to a scheme or course of conduct within any 12-month period may be aggregated to determine the total value involved in the violation of this section.

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

- (a) A copy of the judgment of conviction.
- (b) A transcript of a prior trial, plea-taking, or sentencing.
- (c) Information contained in a presentence report.
- (d) The defendant's statement.

(8) If the sentence for a conviction under this section is enhanced by 1 or more prior convictions, those prior convictions shall not be used to further enhance the sentence for the conviction pursuant to section 10, 11, or 12 of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.10, 769.11, and 769.12.

Sec. 219a. (1) A person shall not knowingly obtain or attempt to obtain telecommunications service with intent to avoid, attempt to avoid, or cause another person to avoid or attempt to avoid any lawful charge for that telecommunications service by using any of the following:

(a) A telecommunications access device without the authority or consent of the subscriber or lawful holder of that telecommunications access device.

(b) A counterfeit telecommunications access device.

(c) A fraudulent or deceptive scheme, pretense, method, or conspiracy, or any device or other means, including, but not limited to, any of the following:

(i) Using a false, altered, or stolen identification.

(ii) The use of a telecommunications access device to violate this section by a person other than the subscriber or lawful holder of the telecommunications access device pursuant to an exchange of anything of value to the subscriber or lawful holder to allow that unlawful use of the telecommunications access device.

(d) A telecommunications device or counterfeit telecommunications device.

(2) A person who violates subsection (1) is guilty of a crime as follows:

(a) If the total value of the telecommunications service obtained or attempted to be obtained is less than \$200.00, the person is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$500.00 or 3 times the total value of the telecommunications service obtained or attempted to be obtained, whichever is greater, or both imprisonment and a fine.

(b) If any of the following apply, the person is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$2,000.00 or 3 times the total value of the telecommunications service obtained or attempted to be obtained, whichever is greater, or both imprisonment and a fine:

(i) The total value of the telecommunications service obtained or attempted to be obtained is \$200.00 or more but less than \$1,000.00.

(ii) The person violates subdivision (a) and has 1 or more prior convictions for committing or attempting to commit an offense under this section or former section 219c or a local ordinance substantially corresponding to this section or former section 219c.

(c) If any of the following apply, the person is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not more than \$10,000.00 or 3 times the total value of the telecommunications service obtained or attempted to be obtained, whichever is greater, or both imprisonment and a fine:

(i) The total value of the telecommunications service obtained or attempted to be obtained is \$1,000.00 or more but less than \$20,000.00.

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

(d) If any of the following apply, the person is guilty of a felony punishable by imprisonment for not more than 10 years or a fine of not more than \$15,000.00 or 3 times the value of the telecommunications service obtained or attempted to be obtained, whichever is greater, or both imprisonment and a fine:

(i) The total value of the telecommunications service obtained or attempted to be obtained is \$20,000.00 or more.

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

(3) The values of telecommunications service obtained or attempted to be obtained in separate incidents pursuant to a scheme or course of conduct within any 12-month period may be aggregated to determine the total value of the telecommunications service obtained or attempted to be obtained.

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

- (a) A copy of the judgment of conviction.
- (b) A transcript of a prior trial, plea-taking, or sentencing.
- (c) Information contained in a presentence report.
- (d) The defendant's statement.

(5) If the sentence for a conviction under this section is enhanced by 1 or more prior convictions, those prior convictions shall not be used to further enhance the sentence for the conviction pursuant to section 10, 11, or 12 of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.10, 769.11, and 769.12.

(6) As used in this section:

(a) "Counterfeit telecommunications access device" means a telecommunications access device that is false, fraudulent, unlawful, not issued to a legitimate telecommunications access device subscriber account, or otherwise invalid or that is expired, suspended, revoked, canceled, or otherwise terminated if notice of the expiration, suspension, revocation, cancellation, or termination has been sent to the telecommunications access device subscriber.

(b) "Counterfeit telecommunications device" means a telecommunications device alone or with another telecommunications device that has been altered or programmed to acquire, intercept, receive, or otherwise facilitate the use of a telecommunications service without the authority or consent of the telecommunications service provider. Counterfeit telecommunications device includes, but is not limited to, a clone telephone, clone microchip, tumbler telephone, tumbler microchip, or wireless scanning device capable of acquiring, intercepting, receiving, or otherwise facilitating the use of a telecommunications service without immediate detection.

(c) "Telecommunications" means the origination, emission, transmission, or reception of data, images, signals, sounds, or other intelligence or equivalence of intelligence of any nature over any communications system by any method, including, but not limited to, electronic, magnetic, optical, digital, or analog.

(d) "Telecommunications access device" means an instrument, device, card, plate, code, telephone number, account number, personal identification number, electronic serial number, mobile identification number, counterfeit number, or financial transaction device as defined in section 157m that alone or with another telecommunications access device can acquire, intercept, provide, receive, use, or otherwise facilitate the use of a telecommunications device, counterfeit telecommunications device, or telecommunications service.

(e) "Telecommunications device" means any instrument, equipment, machine, or device that facilitates telecommunications. Telecommunications device includes, but is not limited to, a computer, computer chip or circuit, telephone, cellular telephone, pager, personal communications device, transponder, receiver, radio, modem, or device that enables use of a modem.

(f) "Telecommunications service" means providing, allowing, facilitating, or generating any form of telecommunications through the use of telecommunications devices or telecommunications access devices over a telecommunications system.

(g) "Value of the telecommunications service obtained or attempted to be obtained" includes, but is not limited to, all of the following:

- (i) Any lawful charge for telecommunications services avoided or attempted to be avoided.
- (ii) The value of any other money, property, or telecommunications service lost, stolen, or rendered unrecoverable by the violation.

(iii) Any actual expenditure incurred by the victim to verify that a telecommunications device or telecommunications access device or telecommunications service was not altered, acquired, damaged, disrupted, destroyed, or stolen as a result of the violation.

Enacting section 1. This amendatory act takes effect January 1, 1999.

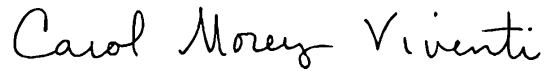
Enacting section 2. This amendatory act does not take effect unless all of the following bills of the 89th Legislature are enacted into law:

- (a) House Bill No. 4444.
- (b) House Bill No. 4446.

This act is ordered to take immediate effect.



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Clerk of the House of Representatives.



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Secretary of the Senate.

Approved \_\_\_\_\_

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Governor.