

Legislative Analysis



ADD CRYPTOCURRENCY TO PENAL CODE

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 4102 as referred to second committee
Sponsor: Rep. Steve Marino

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

House Bill 4103 as referred
Sponsor: Rep. Vanessa Guerra

House Bill 4104 as referred
Sponsor: Rep. Beau Matthew LaFave

House Bill 4106 as referred
Sponsor: Rep. Robert Wittenberg

House Bill 4105 as referred
Sponsor: Rep. Ryan Berman

House Bill 4107 as referred
Sponsor: Rep. Diana Farrington

1st Committee: Financial Services
2nd Committee: Judiciary
Complete to 3-17-19

SUMMARY:

Taken together, the bills would amend various sections of the Michigan Penal Code to add direct and indirect references to *cryptocurrency*. The bills would use the following definitions for *cryptocurrency* and *distributed ledger technology*:

Cryptocurrency means digital currency in which encryption techniques are used to regulate the generation of units of currency and verify the transfer of funds, and that operates independently of a central bank.

Distributed ledger technology means any distributed ledger protocol and supporting infrastructure, including blockchain, that uses a distributed, decentralized, shared, and replicated ledger, whether use of the ledger is public or private, permissioned or permissionless, and that may include the use of electronic currencies or electronic tokens as a medium of electronic exchange.

The bills are not tie-barred to one another. Each bill would take effect 90 days after its enactment. The bills are further described below.

House Bill 4102 – Crimes against animals

Currently, a person is prohibited from knowingly collecting *money* for the fighting, baiting, or shooting of an animal, as those activities are described and prohibited in the Code.

HB 4102 would also prohibit a person from collecting *property or any other thing of value* for those activities.

MCL 750.49

House Bill 4103 – Credit cards

Chapter XXIVA of the Code (Credit Cards) currently defines *financial transaction device* as one of several specifically listed cards or an instrument or other means of access to a credit, deposit, or proprietary account.

HB 4103 would add to this definition the use of *cryptocurrency* or *distributed ledger technology* to access an account.

MCL 750.157m

House Bill 4104 – Criminal enterprises

Chapter XXVA of the Code (Criminal Enterprises) currently defines *racketeering* as committing or attempting to commit a variety of listed offenses *for financial gain*.

HB 4104 would amend the current definition to prohibit a person from committing or attempting to commit the listed offenses *for financial gain by obtaining money, property, or any other thing of value*.

MCL 750.159g

House Bill 4105 – Embezzlement

Under the Code, a person commits embezzlement when that person fraudulently disposes of or converts another person's or entity's *money or personal property* that is under his or her charge or control.

HB 4105 would change the phrase to *money or other personal property* and specify that it includes *cryptocurrency*.

MCL 750.174

House Bill 4106 – Forgery and counterfeiting of records

Generally, a person is prohibited from falsely making, altering, forging, or counterfeiting various specified kinds of records or documents, such as wills or insurance policies, with the intent to injure or defraud another person.

HB 4106 would add that this prohibition applies to a person who violates it by altering a record made utilizing *distributed ledger technology*.

MCL 750.248

House Bill 4107 – Money laundering

House Bill 4107 would add *cryptocurrency* to the definition of *monetary instrument* as that term is used in provisions concerning money laundering and financial transactions involving the proceeds of a criminal offense.

MCL 750.411j

FISCAL IMPACT:

House Bills 4103 and 4105 would have no fiscal impact on the state or on local units of government.

House Bills 4104 and 4106 would have an indeterminate fiscal impact on the state and on local units of government. Expanding the definitions of racketeering and forgery could lead to an increase in the number of individuals convicted of a felony. House Bill 4102 would also have an indeterminate fiscal impact on the state and on local units of government, which would depend on judicial sentencing decisions made for individuals who are convicted. The bill authorizes imprisonment, a fine, and/or community service hours as punishment if convicted. Information is not available on the number of persons who might be convicted under provisions of the bill, and there is no way to know how individuals will be sentenced.

Any new felony convictions under House Bill 4102, 4104, or 4106 would result in increased costs related to state prisons and state probation supervision if the convictions result in imprisonment. In fiscal year 2018, the average cost of prison incarceration in a state facility was roughly \$38,000 per prisoner, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about \$3,700 per supervised offender in the same year. Those costs are financed with state general fund/general purpose revenue. Any fiscal impact on the judiciary and local court systems would depend on how provisions of the bill affect caseloads and related administrative costs. Any increase in penal fine revenues would increase funding for local libraries, which are the constitutionally designated recipients of those revenues.

House Bill 4107 would have no fiscal impact on the state or on local units of government.

POSITIONS:

The Michigan Bankers Association indicated support for the bills. (3-6-19)

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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.