

SENATE SUBSTITUTE FOR
HOUSE BILL NO. 4445

A bill to amend 1931 PA 328, entitled "Michigan penal code," 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:

1 Sec. 74. (1) ~~Burning of personal property--Any~~ A person
2 who ~~wilfully~~ WILLFULLY and maliciously burns any personal prop-
3 erty, other than ~~that~~ PERSONAL PROPERTY specified in ~~the pre-~~
4 ~~ceding sections~~ SECTION 72 OR 73, owned by himself OR HERSELF or
5 another ~~shall, if~~ PERSON IS GUILTY OF A CRIME AS FOLLOWS:

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1 (A) IF the value of the personal property burned or intended
2 to be ~~so~~ burned ~~be \$50.00 or~~ IS less THAN \$200.00, ~~be~~ THE
3 PERSON IS guilty of a misdemeanor ~~. If the value of the per-~~
4 ~~sonal property burned or intended to be so burned be more than~~
5 ~~\$50.00, such person shall be guilty of a felony.~~ PUNISHABLE BY
6 IMPRISONMENT FOR NOT MORE THAN 93 DAYS OR A FINE OF NOT MORE THAN
7 \$500.00 OR 3 TIMES THE VALUE OF THE PERSONAL PROPERTY BURNED OR
8 INTENDED TO BE BURNED, WHICHEVER IS GREATER, OR BOTH IMPRISONMENT
9 AND A FINE.

10 (B) IF ANY OF THE FOLLOWING APPLY, THE PERSON IS GUILTY OF A
11 MISDEMEANOR PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 1 YEAR
12 OR A FINE OF NOT MORE THAN \$2,000.00 OR 3 TIMES THE VALUE OF THE
13 PERSONAL PROPERTY BURNED OR INTENDED TO BE BURNED, WHICHEVER IS
14 GREATER, OR BOTH IMPRISONMENT AND A FINE:

15 (i) THE VALUE OF THE PERSONAL PROPERTY BURNED OR INTENDED TO
16 BE BURNED IS \$200.00 OR MORE BUT LESS THAN \$1,000.00.

17 (ii) THE PERSON VIOLATES SUBDIVISION (A) AND HAS 1 OR MORE
18 PRIOR CONVICTIONS FOR COMMITTING OR ATTEMPTING TO COMMIT AN
19 OFFENSE UNDER THIS CHAPTER OR A LOCAL ORDINANCE SUBSTANTIALLY
20 CORRESPONDING TO AN OFFENSE UNDER THIS CHAPTER.

21 (C) IF ANY OF THE FOLLOWING APPLY, THE PERSON IS GUILTY OF A
22 FELONY PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 5 YEARS OR A
23 FINE OF NOT MORE THAN \$10,000.00 OR 3 TIMES THE VALUE OF THE PER-
24 SONAL PROPERTY BURNED OR INTENDED TO BE BURNED, WHICHEVER IS
25 GREATER, OR BOTH IMPRISONMENT AND A FINE:

26 (i) THE VALUE OF THE PERSONAL PROPERTY BURNED OR INTENDED TO
27 BE BURNED IS \$1,000.00 OR MORE BUT LESS THAN \$20,000.00.

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1 (ii) THE PERSON VIOLATES SUBDIVISION (B)(i) AND HAS 1 OR
2 MORE PRIOR CONVICTIONS FOR VIOLATING OR ATTEMPTING TO VIOLATE
3 THIS CHAPTER. FOR PURPOSES OF THIS SUBPARAGRAPH, HOWEVER, A
4 PRIOR CONVICTION DOES NOT INCLUDE A CONVICTION FOR COMMITTING OR
5 ATTEMPTING TO COMMIT AN OFFENSE FOR WHICH THE MAXIMUM TERM OF
6 IMPRISONMENT IS NOT MORE THAN 93 DAYS OR AN OFFENSE FOR WHICH THE
7 MAXIMUM TERM OF IMPRISONMENT AFTER ENHANCEMENT BY PRIOR CONVIC-
8 TIONS IS NOT MORE THAN 1 YEAR.

9 (D) IF ANY OF THE FOLLOWING APPLY, THE PERSON IS GUILTY OF A
10 FELONY PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 10 YEARS OR A
11 FINE OF NOT MORE THAN \$15,000.00 OR 3 TIMES THE VALUE OF THE PER-
12 SONAL PROPERTY BURNED OR INTENDED TO BE BURNED, WHICHEVER IS
13 GREATER, OR BOTH IMPRISONMENT AND A FINE:

14 (i) THE PERSONAL PROPERTY BURNED OR INTENDED TO BE BURNED
15 HAS A VALUE OF \$20,000.00 OR MORE.

16 (ii) THE PERSON VIOLATES SUBDIVISION (C)(i) AND HAS 2 OR
17 MORE PRIOR CONVICTIONS FOR COMMITTING OR ATTEMPTING TO COMMIT AN
18 OFFENSE UNDER THIS CHAPTER. FOR PURPOSES OF THIS SUBPARAGRAPH,
19 HOWEVER, A PRIOR CONVICTION DOES NOT INCLUDE A CONVICTION FOR
20 COMMITTING OR ATTEMPTING TO COMMIT AN OFFENSE FOR WHICH THE MAXI-
21 MUM TERM OF IMPRISONMENT IS NOT MORE THAN 93 DAYS OR AN OFFENSE
22 FOR WHICH THE MAXIMUM TERM OF IMPRISONMENT AFTER ENHANCEMENT BY
23 PRIOR CONVICTIONS IS NOT MORE THAN 1 YEAR.

24 (2) THE VALUES OF PERSONAL PROPERTY BURNED OR INTENDED TO BE
25 BURNED IN SEPARATE INCIDENTS PURSUANT TO A SCHEME OR COURSE OF
26 CONDUCT WITHIN ANY 12-MONTH PERIOD MAY BE AGGREGATED TO DETERMINE

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1 THE TOTAL VALUE OF PERSONAL PROPERTY BURNED OR INTENDED TO BE
2 BURNED.

3 (3) IF THE PROSECUTING ATTORNEY INTENDS TO SEEK AN ENHANCED
4 SENTENCE BASED UPON THE DEFENDANT HAVING 1 OR MORE PRIOR CONVIC-
5 TIONS, THE PROSECUTING ATTORNEY SHALL INCLUDE ON THE COMPLAINT
6 AND INFORMATION A STATEMENT LISTING THE PRIOR CONVICTION OR
7 CONVICTIONS. THE EXISTENCE OF THE DEFENDANT'S PRIOR CONVICTION
8 OR CONVICTIONS SHALL BE DETERMINED BY THE COURT, WITHOUT A JURY,
9 AT SENTENCING OR AT A SEPARATE HEARING FOR THAT PURPOSE BEFORE
10 SENTENCING. THE EXISTENCE OF A PRIOR CONVICTION MAY BE ESTAB-
11 LISHED BY ANY EVIDENCE RELEVANT FOR THAT PURPOSE, INCLUDING, BUT
12 NOT LIMITED TO, 1 OR MORE OF THE FOLLOWING:

13 (A) A COPY OF THE JUDGMENT OF CONVICTION.

14 (B) A TRANSCRIPT OF A PRIOR TRIAL, PLEA-TAKING, OR
15 SENTENCING.

16 (C) INFORMATION CONTAINED IN A PRESENTENCE REPORT.

17 (D) THE DEFENDANT'S STATEMENT.

18 Sec. 77. ~~Preparation to burn--Any~~ A person who ~~shall in~~
19 ~~any manner use, arrange, place, devise or distribute any~~ USES,
20 ARRANGES, PLACES, DEVISES, OR DISTRIBUTES AN inflammable,
21 combustible, or explosive material, liquid, or substance ~~—~~ or
22 any device in or ~~about any~~ NEAR A building or property
23 ~~mentioned in the foregoing sections of this chapter,~~ DESCRIBED
24 IN SECTION 72, 73, 74, OR 75 with intent to ~~wilfully~~ WILLFULLY
25 and maliciously set fire to or burn the ~~same,~~ BUILDING OR
26 PROPERTY or who aids, counsels, induces, persuades, or procures

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1 another to do ~~such act or acts, shall, if~~ SO IS GUILTY OF A
2 CRIME AS FOLLOWS:

3 (A) IF the property intended to be ~~so~~ burned ~~be~~ IS per-
4 sonal OR REAL property, ~~of the~~ OR BOTH, WITH A COMBINED value
5 ~~of \$50.00 or less, be~~ LESS THAN \$200.00, THE PERSON IS guilty
6 of a misdemeanor ~~. If such property be personal property of the~~
7 ~~value of more than \$50.00, or real property of any value, he~~
8 ~~shall be guilty of a felony.~~ PUNISHABLE BY IMPRISONMENT FOR NOT
9 MORE THAN 93 DAYS OR A FINE OF NOT MORE THAN \$500.00 OR 3 TIMES
10 THE COMBINED VALUE OF THE PROPERTY INTENDED TO BE BURNED, WHICH-
11 EVER IS GREATER, OR BOTH IMPRISONMENT AND A FINE.

12 (B) IF ANY OF THE FOLLOWING APPLY, THE PERSON IS GUILTY OF A
13 MISDEMEANOR PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 1 YEAR
14 OR A FINE OF NOT MORE THAN \$2,000.00 OR 3 TIMES THE COMBINED
15 VALUE OF THE PROPERTY INTENDED TO BE BURNED, WHICHEVER IS GREAT-
16 ER, OR BOTH IMPRISONMENT AND A FINE:

17 (i) THE PROPERTY INTENDED TO BE BURNED IS PERSONAL OR REAL
18 PROPERTY, OR BOTH, WITH A COMBINED VALUE OF \$200.00 OR MORE BUT
19 LESS THAN \$1,000.00.

20 (ii) THE PERSON VIOLATES SUBDIVISION (A) AND HAS 1 OR MORE
21 PRIOR CONVICTIONS FOR COMMITTING OR ATTEMPTING TO COMMIT AN
22 OFFENSE UNDER THIS CHAPTER OR A LOCAL ORDINANCE SUBSTANTIALLY
23 CORRESPONDING TO AN OFFENSE UNDER THIS CHAPTER.

24 (C) IF ANY OF THE FOLLOWING APPLY, THE PERSON IS GUILTY OF A
25 FELONY PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 5 YEARS OR A
26 FINE OF NOT MORE THAN \$10,000.00 OR 3 TIMES THE COMBINED VALUE OF

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1 THE PROPERTY INTENDED TO BE BURNED, WHICHEVER IS GREATER, OR BOTH
2 IMPRISONMENT AND A FINE:

3 (i) THE PROPERTY INTENDED TO BE BURNED IS PERSONAL OR REAL
4 PROPERTY, OR BOTH, WITH A COMBINED VALUE OF \$1,000.00 OR MORE BUT
5 LESS THAN \$20,000.00.

6 (ii) THE PERSON VIOLATES SUBDIVISION (B)(i) AND HAS 1 OR
7 MORE PRIOR CONVICTIONS FOR VIOLATING OR ATTEMPTING TO VIOLATE
8 THIS CHAPTER. FOR PURPOSES OF THIS SUBPARAGRAPH, HOWEVER, A
9 PRIOR CONVICTION DOES NOT INCLUDE A CONVICTION FOR COMMITTING OR
10 ATTEMPTING TO COMMIT AN OFFENSE FOR WHICH THE MAXIMUM TERM OF
11 IMPRISONMENT IS NOT MORE THAN 93 DAYS OR AN OFFENSE FOR WHICH THE
12 MAXIMUM TERM OF IMPRISONMENT AFTER ENHANCEMENT BY PRIOR CONVIC-
13 TIONS IS NOT MORE THAN 1 YEAR.

14 (D) IF ANY OF THE FOLLOWING APPLY, THE PERSON IS GUILTY OF A
15 FELONY PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 10 YEARS OR A
16 FINE OF NOT MORE THAN \$15,000.00 OR 3 TIMES THE COMBINED VALUE OF
17 THE PROPERTY INTENDED TO BE BURNED, WHICHEVER IS GREATER, OR BOTH
18 IMPRISONMENT AND A FINE:

19 (i) THE PROPERTY IS PERSONAL OR REAL PROPERTY, OR BOTH, WITH
20 A COMBINED VALUE OF \$20,000.00 OR MORE.

21 (ii) THE PERSON VIOLATES SUBDIVISION (C)(i) AND HAS 2 OR
22 MORE PRIOR CONVICTIONS FOR COMMITTING OR ATTEMPTING TO COMMIT AN
23 OFFENSE UNDER THIS CHAPTER. FOR PURPOSES OF THIS SUBPARAGRAPH,
24 HOWEVER, A PRIOR CONVICTION DOES NOT INCLUDE A CONVICTION FOR
25 COMMITTING OR ATTEMPTING TO COMMIT AN OFFENSE FOR WHICH THE MAXI-
26 MUM TERM OF IMPRISONMENT IS NOT MORE THAN 93 DAYS OR AN OFFENSE

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1 FOR WHICH THE MAXIMUM TERM OF IMPRISONMENT AFTER ENHANCEMENT BY
2 PRIOR CONVICTIONS IS NOT MORE THAN 1 YEAR.

3 (2) THE COMBINED VALUE OF PROPERTY INTENDED TO BE BURNED IN
4 SEPARATE INCIDENTS PURSUANT TO A SCHEME OR COURSE OF CONDUCT
5 WITHIN ANY 12-MONTH PERIOD MAY BE AGGREGATED TO DETERMINE THE
6 TOTAL VALUE OF PROPERTY INTENDED TO BE BURNED.

7 (3) IF THE PROSECUTING ATTORNEY INTENDS TO SEEK AN ENHANCED
8 SENTENCE BASED UPON THE DEFENDANT HAVING 1 OR MORE PRIOR CONVIC-
9 TIONS, THE PROSECUTING ATTORNEY SHALL INCLUDE ON THE COMPLAINT
10 AND INFORMATION A STATEMENT LISTING THE PRIOR CONVICTION OR
11 CONVICTIONS. THE EXISTENCE OF THE DEFENDANT'S PRIOR CONVICTION
12 OR CONVICTIONS SHALL BE DETERMINED BY THE COURT, WITHOUT A JURY,
13 AT SENTENCING OR AT A SEPARATE HEARING FOR THAT PURPOSE BEFORE
14 SENTENCING. THE EXISTENCE OF A PRIOR CONVICTION MAY BE ESTAB-
15 LISHED BY ANY EVIDENCE RELEVANT FOR THAT PURPOSE, INCLUDING, BUT
16 NOT LIMITED TO, 1 OR MORE OF THE FOLLOWING: THE TOTAL VALUE OF
17 PROPERTY INTENDED TO BE BURNED.

18 (B) A TRANSCRIPT OF A PRIOR TRIAL, PLEA-TAKING, OR
19 SENTENCING.

20 (C) INFORMATION CONTAINED IN A PRESENTENCE REPORT.

21 (D) THE DEFENDANT'S STATEMENT.

22 Sec. 131. (1) A person shall not ~~—, with intent to~~
23 ~~defraud,~~ make, draw, utter, or deliver any check, draft, or
24 order for the payment of money, to apply on account or otherwise,
25 upon any bank or other depository ~~—,~~ WITH INTENT TO DEFRAUD AND
26 knowing at the time of the making, drawing, uttering, or
27 delivering ~~—,~~ that the maker or drawer does not have sufficient

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1 funds in or credit with the bank or other depository ~~, for the~~
2 ~~payment of~~ TO PAY the check, draft, or order ~~, in full ,~~
3 upon its presentation.

4 (2) A person shall not ~~, with the intent to defraud,~~ make,
5 draw, utter, or deliver any check, draft, or order for the pay-
6 ment of money, to apply on account or otherwise, upon any bank or
7 other depository ~~, unless~~ WITH INTENT TO DEFRAUD IF the person
8 ~~has~~ DOES NOT HAVE sufficient funds for the payment of the
9 check, draft, or order when presentation for payment is made to
10 the drawee. ~~, except~~ THIS SUBSECTION DOES NOT APPLY if the lack
11 of funds is due to garnishment, attachment, levy, or other lawful
12 cause ~~,~~ and that fact was not known to the person ~~who~~ WHEN
13 THE PERSON made, drew, uttered, or delivered the check, draft, or
14 order. ~~at the time of the making, drawing, uttering, or~~
15 ~~delivering.~~

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

18 (a) If the amount payable in the check, draft, or order is
19 ~~\$50.00 or~~ less THAN \$100.00, as follows:

20 (i) For a first offense, a misdemeanor ~~,~~ punishable by
21 imprisonment for not more than 93 days ~~,~~ or a fine of not more
22 than ~~\$100.00~~ \$500.00, or both.

23 ~~(ii) For a second offense which is charged as a second~~
24 ~~offense, a misdemeanor, punishable by imprisonment for not more~~
25 ~~than 6 months, or a fine of not more than \$250.00, or both.~~

26 (ii) ~~(iii) For a third~~ AN offense ~~which is charged as a~~
27 ~~third offense~~ FOLLOWING 1 OR MORE PRIOR CONVICTIONS UNDER THIS

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1 SECTION OR A LOCAL ORDINANCE SUBSTANTIALLY CORRESPONDING TO THIS
2 SECTION, a misdemeanor ~~—,~~ punishable by imprisonment for not
3 more than 1 year ~~—,~~ or a fine of not more than ~~—\$500.00—~~
4 \$1,000.00, or both.

5 ~~(iv) For a fourth or subsequent offense which is charged as~~
6 ~~a fourth or subsequent offense, a felony, punishable by imprison-~~
7 ~~ment for not more than 13 months, or a fine of not more than~~
8 ~~\$500.00, or both.~~

9 (b) If the amount payable in the check, draft, or order is
10 ~~more than \$50.00~~ \$100.00 OR MORE but less than ~~—\$200.00—~~
11 \$500.00, as follows:

12 (i) For a first or second offense, a misdemeanor ~~—,~~ punish-
13 able by imprisonment for not more than 1 year ~~—,~~ or a fine of
14 not more than ~~—\$500.00—~~ \$1,000.00 OR 3 TIMES THE AMOUNT PAYABLE,
15 WHICHEVER IS GREATER, or both IMPRISONMENT AND A FINE.

16 (ii) For ~~a third or subsequent~~ AN offense ~~which is~~
17 ~~charged as a third or subsequent offense~~ FOLLOWING 2 OR MORE
18 PRIOR CONVICTIONS UNDER THIS SECTION, a felony ~~—,~~ punishable by
19 imprisonment for not more than ~~—13 months,~~ 2 YEARS or a fine of
20 not more than ~~—\$500.00—~~ \$2,000.00, or both. FOR PURPOSES OF THIS
21 SUBPARAGRAPH, HOWEVER, A PRIOR CONVICTION DOES NOT INCLUDE A CON-
22 VICTION FOR A VIOLATION OR ATTEMPTED VIOLATION OF SUBDIVISION
23 (A).

24 (c) If the amount payable in the check, draft, or order is
25 ~~—\$200.00—~~ \$500.00 or more, a felony ~~—,~~ punishable by imprison-
26 ment for not more than ~~—13 months,~~ 2 YEARS or ~~—by~~ a fine of not

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1 more than ~~-\$500.00-~~ \$2,000.00 OR 3 TIMES THE AMOUNT PAYABLE,
2 WHICHEVER IS GREATER, or both IMPRISONMENT AND A FINE.

3 (4) IF THE PROSECUTING ATTORNEY INTENDS TO SEEK AN ENHANCED
4 SENTENCE BASED UPON THE DEFENDANT HAVING 1 OR MORE PRIOR CONVIC-
5 TIONS, THE PROSECUTING ATTORNEY SHALL INCLUDE ON THE COMPLAINT
6 AND INFORMATION A STATEMENT LISTING THE PRIOR CONVICTION OR
7 CONVICTIONS. THE EXISTENCE OF THE DEFENDANT'S PRIOR CONVICTION
8 OR CONVICTIONS SHALL BE DETERMINED BY THE COURT, WITHOUT A JURY,
9 AT SENTENCING OR AT A SEPARATE HEARING FOR THAT PURPOSE BEFORE
10 SENTENCING. THE EXISTENCE OF A PRIOR CONVICTION MAY BE ESTAB-
11 LISHED BY ANY EVIDENCE RELEVANT FOR THAT PURPOSE, INCLUDING, BUT
12 NOT LIMITED TO, 1 OR MORE OF THE FOLLOWING:

13 (A) A COPY OF THE JUDGMENT OF CONVICTION.

14 (B) A TRANSCRIPT OF A PRIOR TRIAL, PLEA-TAKING, OR
15 SENTENCING.

16 (C) INFORMATION CONTAINED IN A PRESENTENCE REPORT.

17 (D) THE DEFENDANT'S STATEMENT.

18 Sec. 157s. (1) A person who, for the purpose of obtaining
19 goods, property, services, or anything of value, knowingly and
20 with intent to defraud uses 1 or more financial transaction
21 devices ~~which~~ THAT have been revoked or canceled by the issuer
22 of the device or devices, as distinguished from expired, and HAS
23 RECEIVED notice of the revocation or cancellation ~~has been~~
24 ~~received by the person,~~ is guilty of a ~~misdemeanor if~~ CRIME AS
25 FOLLOWS:

26 (A) IF the ~~aggregate~~ value of the goods, property,
27 services, or anything of value is LESS THAN \$100.00, ~~or less,~~

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1 ~~and is guilty of a felony, punishable by a fine of not more than~~
2 ~~\$1,000.00, or imprisonment for not more than 1 year, or both, if~~
3 AS FOLLOWS:

4 (i) FOR A FIRST OFFENSE, A MISDEMEANOR PUNISHABLE BY IMPRIS-
5 ONMENT FOR NOT MORE THAN 93 DAYS OR A FINE OF NOT MORE THAN
6 \$500.00, OR BOTH.

7 (ii) FOR AN OFFENSE FOLLOWING 1 OR MORE PRIOR CONVICTIONS
8 UNDER THIS SECTION OR A LOCAL ORDINANCE SUBSTANTIALLY CORRESPOND-
9 ING TO THIS SECTION, A MISDEMEANOR PUNISHABLE BY IMPRISONMENT FOR
10 NOT MORE THAN 1 YEAR OR A FINE OF NOT MORE THAN \$1,000.00, OR
11 BOTH.

12 (B) IF THE ~~aggregate~~ value of the goods, property, serv-
13 ices, or anything of value is ~~more than~~ \$100.00 OR MORE BUT
14 LESS THAN \$500.00, AS FOLLOWS:

15 (i) FOR A FIRST OR SECOND OFFENSE, A MISDEMEANOR PUNISHABLE
16 BY IMPRISONMENT FOR NOT MORE THAN 1 YEAR OR A FINE OF NOT MORE
17 THAN \$1,000.00 OR 3 TIMES THE AGGREGATE VALUE OF THE GOODS, PROP-
18 erty, services, or anything of value, whichever is greater, OR
19 BOTH IMPRISONMENT AND A FINE.

20 (ii) FOR AN OFFENSE FOLLOWING 2 OR MORE PRIOR CONVICTIONS
21 UNDER THIS SECTION, A FELONY PUNISHABLE BY IMPRISONMENT FOR NOT
22 MORE THAN 2 YEARS OR A FINE OF NOT MORE THAN \$2,000.00, OR BOTH.
23 FOR PURPOSES OF THIS SUBPARAGRAPH, HOWEVER, A PRIOR CONVICTION
24 DOES NOT INCLUDE A CONVICTION FOR A VIOLATION OR ATTEMPTED VIOLA-
25 TION OF SUBDIVISION (A).

26 (C) IF THE VALUE OF THE GOODS, PROPERTY, SERVICES, OR
27 ANYTHING OF VALUE IS \$500.00 OR MORE, A FELONY PUNISHABLE BY

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1 IMPRISONMENT FOR NOT MORE THAN 2 YEARS OR A FINE OF NOT MORE THAN
2 \$2,000.00 OR 3 TIMES THE AGGREGATE VALUE OF THE GOODS, PROPERTY,
3 SERVICES, OR ANYTHING OF VALUE, WHICHEVER IS GREATER, OR BOTH
4 IMPRISONMENT AND A FINE.

5 (2) THE VALUES OF GOODS, PROPERTY, SERVICES, OR THINGS OF
6 VALUE OBTAINED IN SEPARATE INCIDENTS PURSUANT TO A SCHEME OR
7 COURSE OF CONDUCT WITHIN ANY 12-MONTH PERIOD MAY BE AGGREGATED TO
8 DETERMINE THE TOTAL VALUE OF GOODS, PROPERTY, SERVICES, OR THINGS
9 OF VALUE OBTAINED.

10 (3) IF THE PROSECUTING ATTORNEY INTENDS TO SEEK AN ENHANCED
11 SENTENCE BASED UPON THE DEFENDANT HAVING 1 OR MORE PRIOR CONVIC-
12 TIONS, THE PROSECUTING ATTORNEY SHALL INCLUDE ON THE COMPLAINT
13 AND INFORMATION A STATEMENT LISTING THE PRIOR CONVICTION OR
14 CONVICTIONS. THE EXISTENCE OF THE DEFENDANT'S PRIOR CONVICTION
15 OR CONVICTIONS SHALL BE DETERMINED BY THE COURT, WITHOUT A JURY,
16 AT SENTENCING OR AT A SEPARATE HEARING FOR THAT PURPOSE BEFORE
17 SENTENCING. THE EXISTENCE OF A PRIOR CONVICTION MAY BE ESTAB-
18 LISHED BY ANY EVIDENCE RELEVANT FOR THAT PURPOSE, INCLUDING, BUT
19 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
22 SENTENCING.

23 (C) INFORMATION CONTAINED IN A PRESENTENCE REPORT.

24 (D) THE DEFENDANT'S STATEMENT.

25 Sec. 157w. (1) A person who knowingly and with intent
26 to defraud uses a financial transaction device to withdraw or
27 transfer funds from a deposit account in violation of the

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1 contractual limitations imposed on the amount or frequency of
2 withdrawals or transfers ~~—~~ or in an amount ~~in excess of~~
3 EXCEEDING the funds then on deposit in the account ~~—~~ is guilty
4 of a CRIME AS FOLLOWS:

5 (A) A misdemeanor PUNISHABLE BY IMPRISONMENT FOR NOT MORE
6 THAN 93 DAYS OR A FINE OF NOT MORE THAN \$500.00 OR 3 TIMES THE
7 AMOUNT OF FUNDS WITHDRAWN OR TRANSFERRED, WHICHEVER IS GREATER,
8 OR BOTH IMPRISONMENT AND A FINE, if the amount of the funds with-
9 drawn or transferred is ~~\$500.00 or less, and is guilty of a~~
10 ~~felony~~ LESS THAN \$200.00.

11 (B) A MISDEMEANOR PUNISHABLE BY IMPRISONMENT FOR NOT MORE
12 THAN 1 YEAR OR A FINE OF NOT MORE THAN \$2,000.00 OR 3 TIMES THE
13 AMOUNT OF FUNDS WITHDRAWN OR TRANSFERRED, WHICHEVER IS GREATER,
14 OR BOTH IMPRISONMENT AND A FINE, if ANY OF the FOLLOWING APPLY:

15 (i) THE amount of the funds withdrawn or transferred is
16 ~~more than \$500.00~~ \$200.00 OR MORE BUT LESS THAN \$1,000.00.

17 (ii) THE PERSON VIOLATES SUBDIVISION (A) AND HAS 1 OR MORE
18 PRIOR CONVICTIONS FOR COMMITTING OR ATTEMPTING TO COMMIT AN
19 OFFENSE UNDER THIS CHAPTER OR A LOCAL ORDINANCE SUBSTANTIALLY
20 CORRESPONDING TO AN OFFENSE UNDER THIS CHAPTER.

21 (C) A FELONY PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 5
22 YEARS OR A FINE OF NOT MORE THAN \$10,000.00 OR 3 TIMES THE AMOUNT
23 OF FUNDS WITHDRAWN OR TRANSFERRED, WHICHEVER IS GREATER, OR BOTH
24 IMPRISONMENT AND A FINE, IF ANY OF THE FOLLOWING APPLY:

25 (i) THE AMOUNT OF THE FUNDS WITHDRAWN OR TRANSFERRED IS
26 \$1,000.00 OR MORE BUT LESS THAN \$20,000.00.

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1 (ii) THE PERSON VIOLATES SUBDIVISION (B)(i) AND HAS 1 OR
2 MORE PRIOR CONVICTIONS FOR COMMITTING OR ATTEMPTING TO COMMIT AN
3 OFFENSE UNDER THIS CHAPTER. FOR PURPOSES OF THIS SUBPARAGRAPH,
4 HOWEVER, A PRIOR CONVICTION DOES NOT INCLUDE A CONVICTION FOR
5 COMMITTING OR ATTEMPTING TO COMMIT AN OFFENSE FOR WHICH THE MAXI-
6 MUM TERM OF IMPRISONMENT IS NOT MORE THAN 93 DAYS OR AN OFFENSE
7 FOR WHICH THE MAXIMUM TERM OF IMPRISONMENT AFTER ENHANCEMENT BY
8 PRIOR CONVICTIONS IS NOT MORE THAN 1 YEAR.

9 (D) A FELONY PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 10
10 YEARS OR A FINE OF NOT MORE THAN \$15,000.00 OR 3 TIMES THE AMOUNT
11 OF FUNDS WITHDRAWN OR TRANSFERRED, WHICHEVER IS GREATER, OR BOTH
12 IMPRISONMENT AND A FINE, IF ANY OF THE FOLLOWING APPLY:

13 (i) THE AMOUNT OF FUNDS WITHDRAWN OR TRANSFERRED IS
14 \$20,000.00 OR MORE.

15 (ii) THE PERSON VIOLATES SUBDIVISION (C)(i) AND HAS 2 OR
16 MORE PRIOR CONVICTIONS FOR COMMITTING OR ATTEMPTING TO COMMIT AN
17 OFFENSE UNDER THIS CHAPTER. FOR PURPOSES OF THIS SUBPARAGRAPH,
18 HOWEVER, A PRIOR CONVICTION DOES NOT INCLUDE A CONVICTION FOR
19 COMMITTING OR ATTEMPTING TO COMMIT AN OFFENSE FOR WHICH THE MAXI-
20 MUM TERM OF IMPRISONMENT IS NOT MORE THAN 93 DAYS OR AN OFFENSE
21 FOR WHICH THE MAXIMUM TERM OF IMPRISONMENT AFTER ENHANCEMENT BY
22 PRIOR CONVICTIONS IS NOT MORE THAN 1 YEAR.

23 (2) THE AMOUNTS OF FUNDS WITHDRAWN OR TRANSFERRED IN SEPA-
24 RATE INCIDENTS PURSUANT TO A SCHEME OR COURSE OF CONDUCT WITHIN
25 ANY 12-MONTH PERIOD MAY BE AGGREGATED TO DETERMINE THE TOTAL
26 AMOUNT OF FUNDS WITHDRAWN OR TRANSFERRED.

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1 (3) IF THE PROSECUTING ATTORNEY INTENDS TO SEEK AN ENHANCED
2 SENTENCE BASED UPON THE DEFENDANT HAVING 1 OR MORE PRIOR
3 CONVICTIONS, THE PROSECUTING ATTORNEY SHALL INCLUDE ON THE COM-
4 PLAIN AND INFORMATION A STATEMENT LISTING THE PRIOR CONVICTION
5 OR CONVICTIONS. THE EXISTENCE OF THE DEFENDANT'S PRIOR CONVIC-
6 TION OR CONVICTIONS SHALL BE DETERMINED BY THE COURT, WITHOUT A
7 JURY, AT SENTENCING OR AT A SEPARATE HEARING FOR THAT PURPOSE
8 BEFORE SENTENCING. THE EXISTENCE OF A PRIOR CONVICTION MAY BE
9 ESTABLISHED BY ANY EVIDENCE RELEVANT FOR THAT PURPOSE, INCLUDING,
10 BUT NOT LIMITED TO, 1 OR MORE OF THE FOLLOWING:

11 (A) A COPY OF THE JUDGMENT OF CONVICTION.

12 (B) A TRANSCRIPT OF A PRIOR TRIAL, PLEA-TAKING, OR
13 SENTENCING.

14 (C) INFORMATION CONTAINED IN A PRESENTENCE REPORT.

15 (D) THE DEFENDANT'S STATEMENT.

16 Sec. 174. (1) ~~Any~~ A person who as the agent, servant, or
17 employee of another PERSON, GOVERNMENTAL ENTITY WITHIN THIS
18 STATE, OR OTHER LEGAL ENTITY or WHO as the trustee, bailee, or
19 custodian of the property of another PERSON, ~~or of any partner-~~
20 ~~ship, voluntary association, public or private corporation, or of~~
21 ~~this state, or of any county, city, village, township or school~~
22 ~~district~~ GOVERNMENTAL ENTITY within this state, ~~shall~~ OR OTHER
23 LEGAL ENTITY fraudulently ~~dispose~~ DISPOSES of or ~~convert~~
24 CONVERTS to his OR HER own use, or ~~take or secrete~~ TAKES OR
25 SECRETES with THE intent to convert to his OR HER own use without
26 the consent of his OR HER principal, any money or other personal
27 property of his OR HER principal ~~which shall have~~ THAT HAS come

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1 to ~~his~~ THAT PERSON'S possession or ~~shall be~~ THAT IS under his
2 OR HER charge or control by virtue of his OR HER being ~~such~~ AN
3 agent, servant, employee, trustee, bailee, or custodian, ~~as~~
4 aforesaid, ~~shall be~~ IS guilty of ~~the crime of~~ embezzlement. ~~,~~
5 and upon conviction thereof, ~~if~~

6 (2) IF the money or personal property ~~so~~ embezzled ~~shall~~
7 ~~be of the~~ HAS A value of ~~\$100.00 or under~~ LESS THAN \$200.00,
8 ~~shall be~~ THE PERSON IS guilty of a misdemeanor ~~;~~ ~~if the money~~
9 ~~or personal property so embezzled be of the value of more than~~
10 \$100.00, ~~such~~ PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 93
11 DAYS OR A FINE OF NOT MORE THAN \$500.00 OR 3 TIMES THE VALUE OF
12 THE MONEY OR PROPERTY EMBEZZLED, WHICHEVER IS GREATER, OR BOTH
13 IMPRISONMENT AND A FINE.

14 (3) IF ANY OF THE FOLLOWING APPLY, THE PERSON IS GUILTY OF A
15 MISDEMEANOR PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 1 YEAR
16 OR A FINE OF NOT MORE THAN \$2,000.00 OR 3 TIMES THE VALUE OF THE
17 MONEY OR PROPERTY EMBEZZLED, WHICHEVER IS GREATER, OR BOTH
18 IMPRISONMENT AND A FINE:

19 (A) THE MONEY OR PERSONAL PROPERTY EMBEZZLED HAS A VALUE OF
20 \$200.00 OR MORE BUT LESS THAN \$1,000.00.

21 (B) THE PERSON VIOLATES SUBSECTION (2) AND HAS 1 OR MORE
22 PRIOR CONVICTIONS FOR COMMITTING OR ATTEMPTING TO COMMIT AN
23 OFFENSE UNDER THIS CHAPTER OR A LOCAL ORDINANCE SUBSTANTIALLY
24 CORRESPONDING TO AN OFFENSE UNDER THIS CHAPTER.

25 (4) IF ANY OF THE FOLLOWING APPLY, THE person ~~shall be~~ IS
26 guilty of a felony ~~,~~ punishable by imprisonment ~~in the state~~
27 ~~prison~~ FOR not more than ~~10~~ 5 years or ~~by~~ a fine OF not

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1 ~~exceeding \$5,000.00.~~ MORE THAN \$10,000.00 OR 3 TIMES THE VALUE
2 OF THE MONEY OR PROPERTY EMBEZZLED, WHICHEVER IS GREATER, OR BOTH
3 IMPRISONMENT AND A FINE:

4 (A) THE MONEY OR PERSONAL PROPERTY EMBEZZLED HAS A VALUE OF
5 \$1,000.00 OR MORE BUT LESS THAN \$20,000.00.

6 (B) THE PERSON VIOLATES SUBSECTION (3)(A) AND HAS 1 OR MORE
7 PRIOR CONVICTIONS FOR COMMITTING OR ATTEMPTING TO COMMIT AN
8 OFFENSE UNDER THIS CHAPTER. FOR PURPOSES OF THIS SUBDIVISION,
9 HOWEVER, A PRIOR CONVICTION DOES NOT INCLUDE A CONVICTION FOR
10 COMMITTING OR ATTEMPTING TO COMMIT AN OFFENSE FOR WHICH THE MAXI-
11 MUM TERM OF IMPRISONMENT IS NOT MORE THAN 93 DAYS OR AN OFFENSE
12 FOR WHICH THE MAXIMUM TERM OF IMPRISONMENT AFTER ENHANCEMENT BY
13 PRIOR CONVICTIONS IS NOT MORE THAN 1 YEAR.

14 (5) IF ANY OF THE FOLLOWING APPLY, THE PERSON IS GUILTY OF A
15 FELONY PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 10 YEARS OR A
16 FINE OF NOT MORE THAN \$15,000.00 OR 3 TIMES THE VALUE OF THE
17 MONEY OR PROPERTY EMBEZZLED, WHICHEVER IS GREATER, OR BOTH
18 IMPRISONMENT AND A FINE:

19 (A) THE MONEY OR PERSONAL PROPERTY EMBEZZLED HAS A VALUE OF
20 \$20,000.00 OR MORE.

21 (B) THE PERSON VIOLATES SUBSECTION (4)(A) AND HAS 2 OR MORE
22 PRIOR CONVICTIONS FOR COMMITTING OR ATTEMPTING TO COMMIT AN
23 OFFENSE UNDER THIS CHAPTER. FOR PURPOSES OF THIS SUBDIVISION,
24 HOWEVER, A PRIOR CONVICTION DOES NOT INCLUDE A CONVICTION FOR
25 COMMITTING OR ATTEMPTING TO COMMIT AN OFFENSE FOR WHICH THE MAXI-
26 MUM TERM OF IMPRISONMENT IS NOT MORE THAN 93 DAYS OR AN OFFENSE

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1 FOR WHICH THE MAXIMUM TERM OF IMPRISONMENT AFTER ENHANCEMENT BY
2 PRIOR CONVICTIONS IS NOT MORE THAN 1 YEAR.

3 (6) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, THE
4 VALUES OF MONEY OR PERSONAL PROPERTY EMBEZZLED IN SEPARATE INCI-
5 DENTS PURSUANT TO A SCHEME OR COURSE OF CONDUCT WITHIN ANY
6 12-MONTH PERIOD MAY BE AGGREGATED TO DETERMINE THE TOTAL VALUE OF
7 MONEY OR PERSONAL PROPERTY EMBEZZLED. IF THE SCHEME OR COURSE OF
8 CONDUCT IS DIRECTED AGAINST ONLY 1 PERSON, GOVERNMENTAL ENTITY
9 WITHIN THIS STATE, OR OTHER LEGAL ENTITY, NO TIME LIMIT APPLIES
10 TO AGGREGATION UNDER THIS SUBSECTION.

11 (7) IF THE PROSECUTING ATTORNEY INTENDS TO SEEK AN ENHANCED
12 SENTENCE BASED UPON THE DEFENDANT HAVING 1 OR MORE PRIOR CONVIC-
13 TIONS, THE PROSECUTING ATTORNEY SHALL INCLUDE ON THE COMPLAINT
14 AND INFORMATION A STATEMENT LISTING THE PRIOR CONVICTION OR
15 CONVICTIONS. THE EXISTENCE OF THE DEFENDANT'S PRIOR CONVICTION
16 OR CONVICTIONS SHALL BE DETERMINED BY THE COURT, WITHOUT A JURY,
17 AT SENTENCING OR AT A SEPARATE HEARING FOR THAT PURPOSE BEFORE
18 SENTENCING. THE EXISTENCE OF A PRIOR CONVICTION MAY BE ESTAB-
19 LISHED BY ANY EVIDENCE RELEVANT FOR THAT PURPOSE, INCLUDING, BUT
20 NOT LIMITED TO, 1 OR MORE OF THE FOLLOWING:

21 (A) A COPY OF THE JUDGMENT OF CONVICTION.

22 (B) A TRANSCRIPT OF A PRIOR TRIAL, PLEA-TAKING, OR
23 SENTENCING.

24 (C) INFORMATION CONTAINED IN A PRESENTENCE REPORT.

25 (D) THE DEFENDANT'S STATEMENT.

26 (8) In ~~any~~ A prosecution under this section, the failure,
27 neglect, or refusal of ~~such~~ THE agent, servant, employee,

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1 trustee, bailee, or custodian to pay, deliver, or refund to his
2 OR HER principal ~~such~~ THE money or property entrusted to his OR
3 HER care upon demand ~~shall be~~ IS prima facie proof of intent to
4 embezzle.

5 Sec. 177. (1) ~~Any~~ A person ~~who~~ shall NOT embezzle ~~,~~
6 OR fraudulently remove, conceal, or dispose of any personal prop-
7 erty held by him OR HER subject to ~~any~~ A chattel mortgage or
8 written instrument intended to operate as a chattel mortgage, ~~or~~
9 ~~any~~ A lease or written instrument intended to operate as a
10 lease, or ~~any~~ A contract to purchase not yet fulfilled with
11 intent to injure or defraud the mortgagee, lessor, or vendor
12 under ~~such~~ THE contract or any assignee ~~thereof, shall, if the~~
13 ~~property so embezzled, removed, concealed or disposed of, is of~~
14 ~~the value of more than \$100.00, be~~ OF THE MORTGAGEE, LESSOR, OR
15 VENDOR.

16 (2) IF ANY OF THE FOLLOWING APPLY, THE PERSON IS guilty of a
17 felony ~~,~~ punishable by imprisonment ~~in the state prison~~ FOR
18 not more than ~~2~~ 10 years ~~,~~ or ~~by~~ a fine of not more than
19 ~~\$1,000.00.~~ \$15,000.00 OR 3 TIMES THE VALUE OF THE PROPERTY
20 EMBEZZLED, REMOVED, CONCEALED, OR DISPOSED OF, WHICHEVER IS
21 GREATER, OR BOTH IMPRISONMENT AND A FINE:

22 (A) THE PROPERTY EMBEZZLED, REMOVED, CONCEALED, OR DISPOSED
23 OF HAS A VALUE OF \$20,000.00 OR MORE.

24 (B) THE PERSON VIOLATES SUBSECTION (3)(A) AND HAS 2 OR MORE
25 PRIOR CONVICTIONS FOR COMMITTING OR ATTEMPTING TO COMMIT AN
26 OFFENSE UNDER THIS CHAPTER. FOR PURPOSES OF THIS SUBDIVISION,
27 HOWEVER, A PRIOR CONVICTION DOES NOT INCLUDE A CONVICTION FOR

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1 COMMITTING OR ATTEMPTING TO COMMIT AN OFFENSE FOR WHICH THE
2 MAXIMUM TERM OF IMPRISONMENT IS NOT MORE THAN 93 DAYS OR AN
3 OFFENSE FOR WHICH THE MAXIMUM TERM OF IMPRISONMENT AFTER ENHANCE-
4 MENT BY PRIOR CONVICTIONS IS NOT MORE THAN 1 YEAR.

5 (3) IF ANY OF THE FOLLOWING APPLY, THE PERSON IS GUILTY OF A
6 FELONY PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 5 YEARS OR A
7 FINE OF NOT MORE THAN \$10,000.00 OR 3 TIMES THE VALUE OF THE
8 PROPERTY EMBEZZLED, REMOVED, CONCEALED, OR DISPOSED OF, WHICHEVER
9 IS GREATER, OR BOTH IMPRISONMENT AND A FINE:

10 (A) THE PROPERTY EMBEZZLED, REMOVED, CONCEALED, OR DISPOSED
11 OF HAS A VALUE OF \$1,000.00 OR MORE BUT LESS THAN \$20,000.00.

12 (B) THE PERSON VIOLATES SUBSECTION (4)(A) AND HAS 1 OR MORE
13 PRIOR CONVICTIONS FOR COMMITTING OR ATTEMPTING TO COMMIT AN
14 OFFENSE UNDER THIS CHAPTER. FOR PURPOSES OF THIS SUBDIVISION,
15 HOWEVER, A PRIOR CONVICTION DOES NOT INCLUDE A CONVICTION FOR
16 COMMITTING OR ATTEMPTING TO COMMIT AN OFFENSE FOR WHICH THE MAXI-
17 MUM TERM OF IMPRISONMENT IS NOT MORE THAN 93 DAYS OR AN OFFENSE
18 FOR WHICH THE MAXIMUM TERM OF IMPRISONMENT AFTER ENHANCEMENT BY
19 PRIOR CONVICTIONS IS NOT MORE THAN 1 YEAR.

20 (4) IF ANY OF THE FOLLOWING APPLY, THE PERSON IS GUILTY OF A
21 MISDEMEANOR PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 1 YEAR
22 OR A FINE OF NOT MORE THAN \$2,000.00 OR 3 TIMES THE VALUE OF THE
23 PROPERTY EMBEZZLED, REMOVED, CONCEALED, OR DISPOSED OF, WHICHEVER
24 IS GREATER, OR BOTH IMPRISONMENT AND A FINE:

25 (A) THE PROPERTY EMBEZZLED, REMOVED, CONCEALED, OR DISPOSED
26 OF HAS A VALUE OF \$200.00 OR MORE BUT LESS THAN \$1,000.00.

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1 (B) THE PERSON VIOLATES SUBSECTION (5) AND HAS 1 OR MORE
2 PRIOR CONVICTIONS FOR COMMITTING OR ATTEMPTING TO COMMIT AN
3 OFFENSE UNDER THIS CHAPTER OR A LOCAL ORDINANCE SUBSTANTIALLY
4 CORRESPONDING TO AN OFFENSE UNDER THIS CHAPTER.

5 (5) If the property ~~so~~ EMBEZZLED, removed, concealed, or
6 disposed of ~~is of the~~ HAS A value of ~~-\$100.00 or~~ less THAN
7 \$200.00, the person ~~so offending shall be~~ IS guilty of a misde-
8 meanor PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 93 DAYS OR A
9 FINE OF NOT MORE THAN \$500.00 OR 3 TIMES THE VALUE OF THE PROP-
10 ERTY EMBEZZLED, REMOVED, CONCEALED, OR DISPOSED OF, WHICHEVER IS
11 GREATER, OR BOTH IMPRISONMENT AND A FINE.

12 (6) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, THE
13 VALUES OF PROPERTY EMBEZZLED, REMOVED, CONCEALED, OR DISPOSED OF
14 IN SEPARATE INCIDENTS PURSUANT TO A SCHEME OR COURSE OF CONDUCT
15 WITHIN ANY 12-MONTH PERIOD MAY BE AGGREGATED TO DETERMINE THE
16 TOTAL VALUE OF PROPERTY EMBEZZLED, REMOVED, CONCEALED, OR DIS-
17 POSED OF. IF THE SCHEME OR COURSE OF CONDUCT IS DIRECTED AGAINST
18 ONLY 1 MORTGAGEE, LESSOR, OR VENDOR, NO TIME LIMIT APPLIES TO
19 AGGREGATION UNDER THIS SUBSECTION.

20 (7) IF THE PROSECUTING ATTORNEY INTENDS TO SEEK AN ENHANCED
21 SENTENCE BASED UPON THE DEFENDANT HAVING 1 OR MORE PRIOR CONVIC-
22 TIONS, THE PROSECUTING ATTORNEY SHALL INCLUDE ON THE COMPLAINT
23 AND INFORMATION A STATEMENT LISTING THE PRIOR CONVICTION OR
24 CONVICTIONS. THE EXISTENCE OF THE DEFENDANT'S PRIOR CONVICTION
25 OR CONVICTIONS SHALL BE DETERMINED BY THE COURT, WITHOUT A JURY,
26 AT SENTENCING OR AT A SEPARATE HEARING FOR THAT PURPOSE BEFORE
27 SENTENCING. THE EXISTENCE OF A PRIOR CONVICTION MAY BE

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1 ESTABLISHED BY ANY EVIDENCE RELEVANT FOR THAT PURPOSE, INCLUDING,
2 BUT NOT LIMITED TO, 1 OR MORE OF THE FOLLOWING:

3 (A) A COPY OF THE JUDGMENT OF CONVICTION.

4 (B) A TRANSCRIPT OF A PRIOR TRIAL, PLEA-TAKING, OR
5 SENTENCING.

6 (C) INFORMATION CONTAINED IN A PRESENTENCE REPORT.

7 (D) THE DEFENDANT'S STATEMENT.

8 Sec. 178. (1) ~~Any~~ A person ~~who~~ shall NOT EMBEZZLE OR
9 fraudulently ~~embezzle,~~ remove, conceal, or dispose of any per-
10 sonal property ~~which~~ THAT has been mortgaged, leased, or pur-
11 chased under a contract to purchase not yet fulfilled by another
12 PERSON knowing ~~such~~ THE personal property ~~to have~~ HAS been
13 ~~so~~ mortgaged, leased, or purchased ~~,~~ AND with THE intent to
14 injure or defraud the mortgagee, lessor, or vendor under ~~such~~
15 THE contract, or any assignee ~~thereof, shall, if the property so~~
16 ~~embezzled, removed, concealed or disposed of, is of the value of~~
17 ~~more than \$100.00, be~~ OF THE MORTGAGEE, LESSOR, OR VENDOR.

18 (2) IF ANY OF THE FOLLOWING APPLY, THE PERSON IS guilty of a
19 felony ~~,~~ punishable by imprisonment ~~in the state prison~~ FOR
20 not more than ~~2~~ 10 years or ~~by~~ a fine of not more than
21 ~~\$1,000.00.~~ \$15,000.00 OR 3 TIMES THE VALUE OF THE PROPERTY
22 EMBEZZLED, REMOVED, CONCEALED, OR DISPOSED OF, WHICHEVER IS
23 GREATER, OR BOTH IMPRISONMENT AND A FINE:

24 (A) THE PROPERTY EMBEZZLED, REMOVED, CONCEALED, OR DISPOSED
25 OF HAS A VALUE OF \$20,000.00 OR MORE.

26 (B) THE PERSON VIOLATES SUBSECTION (3)(A) AND HAS 2 OR MORE
27 PRIOR CONVICTIONS FOR COMMITTING OR ATTEMPTING TO COMMIT AN

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23

1 OFFENSE UNDER THIS CHAPTER. FOR PURPOSES OF THIS SUBDIVISION,
2 HOWEVER, A PRIOR CONVICTION DOES NOT INCLUDE A CONVICTION FOR
3 COMMITTING OR ATTEMPTING TO COMMIT AN OFFENSE FOR WHICH THE MAXI-
4 MUM TERM OF IMPRISONMENT IS NOT MORE THAN 93 DAYS OR AN OFFENSE
5 FOR WHICH THE MAXIMUM TERM OF IMPRISONMENT AFTER ENHANCEMENT BY
6 PRIOR CONVICTIONS IS NOT MORE THAN 1 YEAR.

7 (3) IF ANY OF THE FOLLOWING APPLY, THE PERSON IS GUILTY OF A
8 FELONY PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 5 YEARS OR A
9 FINE OF NOT MORE THAN \$10,000.00 OR 3 TIMES THE VALUE OF THE
10 PROPERTY EMBEZZLED, REMOVED, CONCEALED, OR DISPOSED OF, WHICHEVER
11 IS GREATER, OR BOTH IMPRISONMENT AND A FINE:

12 (A) THE PROPERTY EMBEZZLED, REMOVED, CONCEALED, OR DISPOSED
13 OF HAS A VALUE OF \$1,000.00 OR MORE BUT LESS THAN \$20,000.00.

14 (B) THE PERSON VIOLATES SUBSECTION (4)(A) AND HAS 1 OR MORE
15 PRIOR CONVICTIONS FOR COMMITTING OR ATTEMPTING TO COMMIT AN
16 OFFENSE UNDER THIS CHAPTER. FOR PURPOSES OF THIS SUBDIVISION,
17 HOWEVER, A PRIOR CONVICTION DOES NOT INCLUDE A CONVICTION FOR
18 COMMITTING OR ATTEMPTING TO COMMIT AN OFFENSE FOR WHICH THE MAXI-
19 MUM TERM OF IMPRISONMENT IS NOT MORE THAN 93 DAYS OR AN OFFENSE
20 FOR WHICH THE MAXIMUM TERM OF IMPRISONMENT AFTER ENHANCEMENT BY
21 PRIOR CONVICTIONS IS NOT MORE THAN 1 YEAR.

22 (4) IF ANY OF THE FOLLOWING APPLY, THE PERSON IS GUILTY OF A
23 MISDEMEANOR PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 1 YEAR
24 OR A FINE OF NOT MORE THAN \$2,000.00 OR 3 TIMES THE VALUE OF THE
25 PROPERTY EMBEZZLED, REMOVED, CONCEALED, OR DISPOSED OF, WHICHEVER
26 IS GREATER, OR BOTH IMPRISONMENT AND A FINE:

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1 (A) THE PROPERTY EMBEZZLED, REMOVED, CONCEALED, OR DISPOSED
2 OF HAS A VALUE OF \$200.00 OR MORE BUT LESS THAN \$1,000.00.

3 (B) THE PERSON VIOLATES SUBSECTION (5) AND HAS 1 OR MORE
4 PRIOR CONVICTIONS FOR COMMITTING OR ATTEMPTING TO COMMIT AN
5 OFFENSE UNDER THIS CHAPTER OR A LOCAL ORDINANCE SUBSTANTIALLY
6 CORRESPONDING TO AN OFFENSE UNDER THIS CHAPTER.

7 (5) If the property ~~so~~ EMBEZZLED, removed, concealed, or
8 disposed of ~~is of the~~ HAS A value of ~~-\$100.00 or~~ less THAN
9 \$200.00, the person ~~so offending shall be~~ IS guilty of a misde-
10 meanor PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 93 DAYS OR A
11 FINE OF NOT MORE THAN \$500.00 OR 3 TIMES THE VALUE OF THE PROP-
12 ERTY EMBEZZLED, REMOVED, CONCEALED, OR DISPOSED OF, WHICHEVER IS
13 GREATER, OR BOTH IMPRISONMENT AND A FINE.

14 (6) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, THE
15 VALUES OF PROPERTY EMBEZZLED, REMOVED, CONCEALED, OR DISPOSED OF
16 IN SEPARATE INCIDENTS PURSUANT TO A SCHEME OR COURSE OF CONDUCT
17 WITHIN ANY 12-MONTH PERIOD MAY BE AGGREGATED TO DETERMINE THE
18 TOTAL VALUE OF PROPERTY EMBEZZLED, REMOVED, CONCEALED, OR DIS-
19 POSED OF. IF THE SCHEME OR COURSE OF CONDUCT IS DIRECTED AGAINST
20 ONLY 1 MORTGAGEE, LESSOR, OR VENDOR, NO TIME LIMIT APPLIES TO
21 AGGREGATION UNDER THIS SUBSECTION.

22 (7) IF THE PROSECUTING ATTORNEY INTENDS TO SEEK AN ENHANCED
23 SENTENCE BASED UPON THE DEFENDANT HAVING 1 OR MORE PRIOR CONVIC-
24 TIONS, THE PROSECUTING ATTORNEY SHALL INCLUDE ON THE COMPLAINT
25 AND INFORMATION A STATEMENT LISTING THE PRIOR CONVICTION OR
26 CONVICTIONS. THE EXISTENCE OF THE DEFENDANT'S PRIOR CONVICTION
27 OR CONVICTIONS SHALL BE DETERMINED BY THE COURT, WITHOUT A JURY,

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1 AT SENTENCING OR AT A SEPARATE HEARING FOR THAT PURPOSE BEFORE
2 SENTENCING. THE EXISTENCE OF A PRIOR CONVICTION MAY BE ESTAB-
3 LISHED BY ANY EVIDENCE RELEVANT FOR THAT PURPOSE, INCLUDING, BUT
4 NOT LIMITED TO, 1 OR MORE OF THE FOLLOWING:

5 (A) A COPY OF THE JUDGMENT OF CONVICTION.

6 (B) A TRANSCRIPT OF A PRIOR TRIAL, PLEA-TAKING, OR
7 SENTENCING.

8 (C) INFORMATION CONTAINED IN A PRESENTENCE REPORT.

9 (D) THE DEFENDANT'S STATEMENT.

10 Sec. 181. (1) ~~Any~~ AN agent, servant, employee, trustee,
11 bailee, custodian, attorney-at-law, collector, or other person
12 ~~,~~ who ~~,~~ ~~in any manner~~ receives or collects IN ANY MANNER
13 money or ~~any~~ other personal property ~~which~~ THAT is partly the
14 property of another PERSON, GOVERNMENTAL ENTITY WITHIN THIS
15 STATE, OR OTHER LEGAL ENTITY and partly the property of ~~such~~
16 THE agent, servant, employee, trustee, bailee, custodian,
17 attorney-at-law, collector, or other person ~~,~~ ~~and who~~ shall NOT
18 embezzle, ~~or~~ fraudulently dispose of, ~~or~~ convert to his OR
19 HER own use, or take or secrete with intent to embezzle or con-
20 vert to his OR HER own use ~~,~~ ~~such~~ THE money or personal prop-
21 erty ~~,~~ without the consent of the part owner of ~~such~~ THE
22 money or personal property. ~~,~~ ~~shall, if~~

23 (2) IF the money or personal property ~~so~~ embezzled, ~~is of~~
24 ~~the~~ DISPOSED OF, CONVERTED, TAKEN, OR SECRETED HAS A value of
25 ~~\$100.00 or under, be~~ LESS THAN \$200.00, THE PERSON IS guilty of
26 a misdemeanor ~~;~~ ~~if the money or personal property so embezzled~~
27 ~~is of the value of more than \$100.00, he shall be~~ PUNISHABLE BY

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1 IMPRISONMENT FOR NOT MORE THAN 93 DAYS OR A FINE OF NOT MORE THAN
2 \$500.00 OR 3 TIMES THE VALUE OF THE MONEY OR PROPERTY EMBEZZLED,
3 DISPOSED OF, CONVERTED, TAKEN, OR SECRETED, WHICHEVER IS GREATER,
4 OR BOTH IMPRISONMENT AND A FINE.

5 (3) IF ANY OF THE FOLLOWING APPLY, THE PERSON IS GUILTY OF A
6 MISDEMEANOR PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 1 YEAR
7 OR A FINE OF NOT MORE THAN \$2,000.00 OR 3 TIMES THE VALUE OF THE
8 MONEY OR PROPERTY EMBEZZLED, DISPOSED OF, CONVERTED, TAKEN, OR
9 SECRETED, WHICHEVER IS GREATER, OR BOTH IMPRISONMENT AND A FINE:

10 (A) THE MONEY OR PERSONAL PROPERTY EMBEZZLED, DISPOSED OF,
11 CONVERTED, TAKEN, OR SECRETED HAS A VALUE OF \$200.00 OR MORE BUT
12 LESS THAN \$1,000.00.

13 (B) THE PERSON VIOLATES SUBSECTION (2) AND HAS 1 OR MORE
14 PRIOR CONVICTIONS FOR COMMITTING OR ATTEMPTING TO COMMIT AN
15 OFFENSE UNDER THIS CHAPTER OR A LOCAL ORDINANCE SUBSTANTIALLY
16 CORRESPONDING TO AN OFFENSE UNDER THIS CHAPTER.

17 (4) IF ANY OF THE FOLLOWING APPLY, THE PERSON IS GUILTY OF A
18 FELONY PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 5 YEARS OR A
19 FINE OF NOT MORE THAN \$10,000.00 OR 3 TIMES THE VALUE OF THE
20 MONEY OR PROPERTY EMBEZZLED, DISPOSED OF, CONVERTED, TAKEN, OR
21 SECRETED, WHICHEVER IS GREATER, OR BOTH IMPRISONMENT AND A FINE:

22 (A) THE MONEY OR PERSONAL PROPERTY EMBEZZLED, DISPOSED OF,
23 CONVERTED, TAKEN, OR SECRETED HAS A VALUE OF \$1,000.00 OR MORE
24 BUT LESS THAN \$20,000.00.

25 (B) THE PERSON VIOLATES SUBSECTION (3)(A) AND HAS 1 OR MORE
26 PRIOR CONVICTIONS FOR COMMITTING OR ATTEMPTING TO COMMIT AN
27 OFFENSE UNDER THIS CHAPTER. FOR PURPOSES OF THIS SUBDIVISION,

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1 HOWEVER, A PRIOR CONVICTION DOES NOT INCLUDE A CONVICTION FOR
2 COMMITTING OR ATTEMPTING TO COMMIT AN OFFENSE FOR WHICH THE MAXI-
3 MUM TERM OF IMPRISONMENT IS NOT MORE THAN 93 DAYS OR AN OFFENSE
4 FOR WHICH THE MAXIMUM TERM OF IMPRISONMENT AFTER ENHANCEMENT BY
5 PRIOR CONVICTIONS IS NOT MORE THAN 1 YEAR.

6 (5) IF ANY OF THE FOLLOWING APPLY, THE PERSON IS guilty of a
7 felony ~~—~~ punishable by imprisonment ~~in the state prison~~ FOR
8 not more than 10 years or ~~by~~ a fine of not more than
9 ~~\$5,000.00.~~ \$15,000.00 OR 3 TIMES THE VALUE OF THE MONEY OR
10 PROPERTY EMBEZZLED, DISPOSED OF, CONVERTED, TAKEN, OR SECRETED,
11 WHICHEVER IS GREATER, OR BOTH IMPRISONMENT AND A FINE:

12 (A) THE MONEY OR PERSONAL PROPERTY EMBEZZLED, DISPOSED OF,
13 CONVERTED, TAKEN, OR SECRETED HAS A VALUE OF \$20,000.00 OR MORE.

14 (B) THE PERSON VIOLATES SUBSECTION (4)(A) AND HAS 2 OR MORE
15 PRIOR CONVICTIONS FOR COMMITTING OR ATTEMPTING TO COMMIT AN
16 OFFENSE UNDER THIS CHAPTER. FOR PURPOSES OF THIS SUBDIVISION,
17 HOWEVER, A PRIOR CONVICTION DOES NOT INCLUDE A CONVICTION FOR
18 COMMITTING OR ATTEMPTING TO COMMIT AN OFFENSE FOR WHICH THE MAXI-
19 MUM TERM OF IMPRISONMENT IS NOT MORE THAN 93 DAYS OR AN OFFENSE
20 FOR WHICH THE MAXIMUM TERM OF IMPRISONMENT AFTER ENHANCEMENT BY
21 PRIOR CONVICTIONS IS NOT MORE THAN 1 YEAR.

22 (6) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, THE
23 VALUES OF MONEY OR PROPERTY EMBEZZLED, DISPOSED OF, CONVERTED,
24 TAKEN, OR SECRETED IN SEPARATE INCIDENTS PURSUANT TO A SCHEME OR
25 COURSE OF CONDUCT WITHIN ANY 12-MONTH PERIOD MAY BE AGGREGATED TO
26 DETERMINE THE TOTAL VALUE OF MONEY OR PERSONAL PROPERTY
27 EMBEZZLED, DISPOSED OF, CONVERTED, TAKEN, OR SECRETED. IF THE

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1 SCHEME OR COURSE OF CONDUCT IS DIRECTED AGAINST ONLY 1 PERSON,
2 GOVERNMENTAL ENTITY WITHIN THIS STATE, OR OTHER LEGAL ENTITY, NO
3 TIME LIMIT APPLIES TO AGGREGATION UNDER THIS SUBSECTION.

4 (7) IF THE PROSECUTING ATTORNEY INTENDS TO SEEK AN ENHANCED
5 SENTENCE BASED UPON THE DEFENDANT HAVING 1 OR MORE PRIOR CONVIC-
6 TIONS, THE PROSECUTING ATTORNEY SHALL INCLUDE ON THE COMPLAINT
7 AND INFORMATION A STATEMENT LISTING THE PRIOR CONVICTION OR
8 CONVICTIONS. THE EXISTENCE OF THE DEFENDANT'S PRIOR CONVICTION
9 OR CONVICTIONS SHALL BE DETERMINED BY THE COURT, WITHOUT A JURY,
10 AT SENTENCING OR AT A SEPARATE HEARING FOR THAT PURPOSE BEFORE
11 SENTENCING. THE EXISTENCE OF A PRIOR CONVICTION MAY BE ESTAB-
12 LISHED BY ANY EVIDENCE RELEVANT FOR THAT PURPOSE, INCLUDING, BUT
13 NOT LIMITED TO, 1 OR MORE OF THE FOLLOWING:

14 (A) A COPY OF THE JUDGMENT OF CONVICTION.

15 (B) A TRANSCRIPT OF A PRIOR TRIAL, PLEA-TAKING, OR
16 SENTENCING.

17 (C) INFORMATION CONTAINED IN A PRESENTENCE REPORT.

18 (D) THE DEFENDANT'S STATEMENT.

19 (8) In ~~any~~ A prosecution ~~for such crime it shall be no~~
20 UNDER THIS SECTION, IT IS NOT A defense that ~~such~~ THE agent,
21 servant, employee, trustee, bailee, custodian, attorney-at-law,
22 collector, or other person was entitled to a compensation out of
23 ~~such~~ THE money or personal property as compensation for col-
24 lecting or receiving ~~the same~~ IT for ~~and on behalf of the~~ ITS
25 owner, ~~thereof,~~ but it ~~shall be no~~ IS NOT embezzlement ~~on~~
26 ~~the part of such~~ BY THE agent, servant, employee, trustee,
27 bailee, custodian, attorney-at-law, collector, or other person to

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1 retain his OR HER reasonable collection fee on the collection or
2 any other valid interest he ~~may have~~ OR SHE HAS in ~~such~~ THE
3 money or personal property.

4 (9) In ~~any~~ A prosecution under this section, the failure,
5 neglect, or refusal of ~~such~~ THE agent, servant, employee,
6 trustee, bailee, custodian, attorney-at-law, collector, or other
7 person to pay, deliver, or refund to the proper person ~~such~~ THE
8 money or personal property entrusted to his OR HER care, upon
9 demand, ~~shall be~~ IS prima facie proof of intent to embezzle.

10 Sec. 218. (1) ~~Any~~ A person who, with intent to defraud or
11 cheat ~~, shall designedly,~~ AND by color of ~~any~~ A false token
12 or writing, ~~or~~ by ~~any~~ A false or bogus check or other writ-
13 ten, printed, or engraved instrument, by ~~spurious~~ COUNTERFEIT
14 coin or metal ~~in the similitude of~~ THAT IS INTENDED TO SIMULATE
15 A coin, or by any other false pretense ~~, cause any~~ DOES 1 OR
16 MORE OF THE FOLLOWING IS GUILTY OF A CRIME PUNISHABLE AS PROVIDED
17 IN THIS SECTION:

18 (A) CAUSES A person to grant, convey, assign, demise, lease,
19 or mortgage ~~any~~ land or AN interest in land. ~~, or obtain the~~

20 (B) OBTAINS A PERSON'S signature ~~of any person to any~~ ON A
21 FORGED written instrument. ~~, the making whereof would be punish-~~
22 ~~able as forgery, or obtain~~

23 (C) OBTAINS from ~~any~~ A person any money or personal prop-
24 erty or the use of any instrument, facility, ~~or~~ article, or
25 other valuable thing or service. ~~, or by~~

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1 (D) BY means of ~~any false weights or measures obtain~~ A
2 FALSE WEIGHT OR MEASURE OBTAINS a larger amount or quantity of
3 property than was bargained for. ~~, or by~~

4 (E) BY means of ~~any false weights or measures sell or~~
5 ~~dispose~~ A FALSE WEIGHT OR MEASURE SELLS OR DISPOSES of a ~~less~~
6 SMALLER amount or quantity of property than was bargained for.
7 ~~, if such~~

8 (2) IF THE land, ~~or~~ interest in land, money, personal
9 property, use of ~~such~~ THE instrument, facility, ~~or~~ article,
10 OR valuable thing, service, larger amount obtained, or ~~less~~
11 SMALLER amount SOLD OR disposed of ~~, shall be of the~~ HAS A
12 value of ~~-\$100.00 or~~ less THAN \$200.00, ~~shall be~~ THE PERSON IS
13 guilty of a misdemeanor ~~; and if such~~ PUNISHABLE BY IMPRISON-
14 MENT FOR NOT MORE THAN 93 DAYS OR A FINE OF NOT MORE THAN \$500.00
15 OR 3 TIMES THE VALUE, WHICHEVER IS GREATER, OR BOTH IMPRISONMENT
16 AND A FINE.

17 (3) IF ANY OF THE FOLLOWING APPLY, THE PERSON IS GUILTY OF A
18 MISDEMEANOR PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 1 YEAR
19 OR A FINE OF NOT MORE THAN \$2,000.00 OR 3 TIMES THE VALUE, WHICH-
20 EVER IS GREATER, OR BOTH IMPRISONMENT AND A FINE:

21 (A) THE LAND, INTEREST IN LAND, MONEY, PERSONAL PROPERTY,
22 USE OF THE INSTRUMENT, FACILITY, ARTICLE, OR VALUABLE THING,
23 SERVICE, LARGER AMOUNT OBTAINED, OR SMALLER AMOUNT SOLD OR DIS-
24 POSED OF HAS A VALUE OF \$200.00 OR MORE BUT LESS THAN \$1,000.00.

25 (B) THE PERSON VIOLATES SUBSECTION (2) AND HAS 1 OR MORE
26 PRIOR CONVICTIONS FOR COMMITTING OR ATTEMPTING TO COMMIT AN

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1 OFFENSE UNDER THIS SECTION OR A LOCAL ORDINANCE SUBSTANTIALLY
2 CORRESPONDING TO THIS SECTION.

3 (4) IF ANY OF THE FOLLOWING APPLY, THE PERSON IS GUILTY OF A
4 FELONY PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 5 YEARS OR A
5 FINE OF NOT MORE THAN \$10,000.00 OR 3 TIMES THE VALUE, WHICHEVER
6 IS GREATER, OR BOTH IMPRISONMENT AND A FINE:

7 (A) THE LAND, INTEREST IN LAND, MONEY, PERSONAL PROPERTY,
8 USE OF THE INSTRUMENT, FACILITY, ARTICLE, OR VALUABLE THING,
9 SERVICE, LARGER AMOUNT OBTAINED, OR SMALLER AMOUNT SOLD OR DIS-
10 POSED OF HAS A VALUE OF \$1,000.00 OR MORE BUT LESS THAN
11 \$20,000.00.

12 (B) THE PERSON VIOLATES SUBSECTION (3)(A) AND HAS 1 OR MORE
13 PRIOR CONVICTIONS FOR COMMITTING OR ATTEMPTING TO COMMIT AN
14 OFFENSE UNDER THIS SECTION. FOR PURPOSES OF THIS SUBDIVISION,
15 HOWEVER, A PRIOR CONVICTION DOES NOT INCLUDE A CONVICTION FOR A
16 VIOLATION OR ATTEMPTED VIOLATION OF SUBSECTION (2) OR (3)(B).

17 (5) IF ANY OF THE FOLLOWING APPLY, THE PERSON IS GUILTY OF A
18 FELONY PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 10 YEARS OR A
19 FINE OF NOT MORE THAN \$15,000.00 OR 3 TIMES THE VALUE, WHICHEVER
20 IS GREATER, OR BOTH IMPRISONMENT AND A FINE:

21 (A) THE land, interest in land, money, personal property,
22 use of ~~such~~ THE instrument, facility, ~~or~~ article, OR valuable
23 thing, service, larger amount obtained, or ~~less~~ SMALLER amount
24 SOLD OR disposed of ~~shall be of the~~ HAS A value of \$20,000.00
25 OR more. ~~than \$100.00, such person shall be guilty of a felony,~~
26 ~~punishable by imprisonment in the state prison not more than 10~~
27 ~~years or by a fine of not more than \$5,000.00.~~

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1 (B) THE PERSON VIOLATES SUBSECTION (4)(A) AND HAS 2 OR MORE
2 PRIOR CONVICTIONS FOR COMMITTING OR ATTEMPTING TO COMMIT AN
3 OFFENSE UNDER THIS SECTION. FOR PURPOSES OF THIS SUBDIVISION,
4 HOWEVER, A PRIOR CONVICTION DOES NOT INCLUDE A CONVICTION FOR A
5 VIOLATION OR ATTEMPTED VIOLATION OF SUBSECTION (2) OR (3)(B).

6 (6) THE VALUES OF LAND, INTEREST IN LAND, MONEY, PERSONAL
7 PROPERTY, USE OF THE INSTRUMENT, FACILITY, ARTICLE, OR VALUABLE
8 THING, SERVICE, LARGER AMOUNT OBTAINED, OR SMALLER AMOUNT SOLD OR
9 DISPOSED OF IN SEPARATE INCIDENTS PURSUANT TO A SCHEME OR COURSE
10 OF CONDUCT WITHIN ANY 12-MONTH PERIOD MAY BE AGGREGATED TO DETER-
11 MINE THE TOTAL VALUE INVOLVED IN THE VIOLATION OF THIS SECTION.

12 (7) IF THE PROSECUTING ATTORNEY INTENDS TO SEEK AN ENHANCED
13 SENTENCE BASED UPON THE DEFENDANT HAVING 1 OR MORE PRIOR CONVIC-
14 TIONS, THE PROSECUTING ATTORNEY SHALL INCLUDE ON THE COMPLAINT
15 AND INFORMATION A STATEMENT LISTING THE PRIOR CONVICTION OR
16 CONVICTIONS. THE EXISTENCE OF THE DEFENDANT'S PRIOR CONVICTION
17 OR CONVICTIONS SHALL BE DETERMINED BY THE COURT, WITHOUT A JURY,
18 AT SENTENCING OR AT A SEPARATE HEARING FOR THAT PURPOSE BEFORE
19 SENTENCING. THE EXISTENCE OF A PRIOR CONVICTION MAY BE ESTAB-
20 LISHED BY ANY EVIDENCE RELEVANT FOR THAT PURPOSE, INCLUDING, BUT
21 NOT LIMITED TO, 1 OR MORE OF THE FOLLOWING:

22 (A) A COPY OF THE JUDGMENT OF CONVICTION.

23 (B) A TRANSCRIPT OF A PRIOR TRIAL, PLEA-TAKING, OR
24 SENTENCING.

25 (C) INFORMATION CONTAINED IN A PRESENTENCE REPORT.

26 (D) THE DEFENDANT'S STATEMENT.

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

6 (a) A telecommunications access device without the authority
7 or consent of the subscriber or lawful holder of that telecommu-
8 nications access device.

9 (b) A counterfeit telecommunications access device.

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

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

14 (ii) The use of a telecommunications access device to vio-
15 late this section by a person other than the subscriber or lawful
16 holder of the telecommunications access device pursuant to an
17 exchange of anything of value to the subscriber or lawful holder
18 to allow that unlawful use of the telecommunications access
19 device.

20 (d) A telecommunications device or counterfeit telecommuni-
21 cations device.

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

24 (a) If the total value of the telecommunications service
25 obtained or attempted to be obtained is less than \$200.00, the
26 person is guilty of a misdemeanor punishable by imprisonment for
27 not more than 93 days or a fine of not more than \$500.00 or 3

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1 times the total value of the telecommunications service obtained
2 or attempted to be obtained, whichever is greater, or both
3 imprisonment and a fine.

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

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

12 (ii) The person violates subdivision (a) and has ~~a~~ 1 OR
13 MORE prior ~~conviction~~ CONVICTIONS for committing or attempting
14 to commit an offense under this section, SECTION 540G, or former
15 section 219c OR A LOCAL ORDINANCE SUBSTANTIALLY CORRESPONDING TO
16 SECTION 219A, 540G, OR FORMER SECTION 219C.

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

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

25 (ii) The person violates subdivision ~~(a)~~ (B)(i) and has
26 ~~2~~ 1 OR MORE prior convictions for committing or attempting to
27 commit an offense under this section or ~~former~~ section ~~219c~~

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1 540G. FOR PURPOSES OF THIS SUBPARAGRAPH, A PRIOR CONVICTION DOES
2 NOT INCLUDE A CONVICTION FOR COMMITTING OR ATTEMPTING TO COMMIT
3 AN OFFENSE FOR WHICH THE MAXIMUM TERM OF IMPRISONMENT IS NOT MORE
4 THAN 93 DAYS OR AN OFFENSE FOR WHICH THE MAXIMUM TERM OF IMPRIS-
5 ONMENT AFTER ENHANCEMENT BY PRIOR CONVICTIONS IS NOT MORE THAN 1
6 YEAR.

7 ~~(iii) The person violates subdivision (b) and has a prior~~
8 ~~conviction for committing or attempting to commit an offense~~
9 ~~under this section or former section 219c.~~

10 (d) If any of the following apply, the person is guilty of a
11 felony punishable by imprisonment for not more than 10 years or a
12 fine of not more than \$15,000.00 OR 3 times the value of the
13 telecommunications service obtained or attempted to be obtained,
14 WHICHEVER IS GREATER, or both IMPRISONMENT AND A FINE:

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

17 (ii) The person violates subdivision ~~(a)~~ (C)(i) and has
18 ~~3~~ 2 or more prior convictions for committing or attempting to
19 commit an offense under this section or ~~former~~ section ~~219c~~

20 540G. FOR PURPOSES OF THIS SUBPARAGRAPH, HOWEVER, A PRIOR CON-
21 VICTION DOES NOT INCLUDE A CONVICTION FOR COMMITTING OR ATTEMPT-
22 ING TO COMMIT AN OFFENSE FOR WHICH THE MAXIMUM TERM OF IMPRISON-
23 MENT IS NOT MORE THAN 93 DAYS OR AN OFFENSE FOR WHICH THE MAXIMUM
24 TERM OF IMPRISONMENT AFTER ENHANCEMENT BY PRIOR CONVICTIONS IS
25 NOT MORE THAN 1 YEAR.

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1 ~~(iii) The person violates subdivision (b) and has 2 or more~~
2 ~~prior convictions for committing or attempting to commit an~~
3 ~~offense under this section or former section 219c.~~

4 ~~(iv) The person violates subdivision (c) and has a prior~~
5 ~~conviction for committing or attempting to commit an offense~~
6 ~~under this section or former section 219c.~~

7 (3) The values of telecommunications service obtained or
8 attempted to be obtained in separate incidents pursuant to a
9 scheme or course of conduct within ~~1 year~~ ANY 12-MONTH PERIOD
10 may be aggregated to determine the total value of the telecommu-
11 nications service obtained or attempted to be obtained.

12 (4) If the prosecuting attorney intends to seek an enhanced
13 sentence based upon the defendant having ~~a~~ 1 OR MORE prior
14 ~~conviction~~ CONVICTIONS, the prosecuting attorney shall include
15 on the complaint and information a statement listing ~~that~~ THE
16 prior conviction OR CONVICTIONS. The existence of the
17 defendant's prior conviction OR CONVICTIONS shall be determined
18 by the court, without a jury, at sentencing OR AT A SEPARATE
19 HEARING FOR THAT PURPOSE BEFORE SENTENCING. The existence of a
20 prior conviction may be established by any evidence relevant for
21 that purpose, including, but not limited to, 1 or more of the
22 following:

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

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

26 (c) Information contained in a presentence report.

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1 (d) The defendant's statement.

2 (5) As used in this section:

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

11 (b) "Counterfeit telecommunications device" means a telecom-
12 munications device alone or with another telecommunications
13 device that has been altered or programmed to acquire, intercept,
14 receive, or otherwise facilitate the use of a telecommunications
15 service without the authority or consent of the telecommunica-
16 tions service provider. Counterfeit telecommunications device
17 includes but is not limited to a clone telephone, clone micro-
18 chip, tumbler telephone, tumbler microchip, or wireless scanning
19 device capable of acquiring, intercepting, receiving, or other-
20 wise facilitating the use of a telecommunications service without
21 immediate detection.

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

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1 (d) "Telecommunications access device" means an instrument,
2 device, card, plate, code, telephone number, account number,
3 personal identification number, electronic serial number, mobile
4 identification number, counterfeit number, or financial transac-
5 tion device as defined in section 157m that alone or with another
6 telecommunications access device can acquire, intercept, provide,
7 receive, use, or otherwise facilitate the use of a telecommunica-
8 tions device, counterfeit telecommunications device, or telecom-
9 munications service.

10 (e) "Telecommunications device" means any instrument, equip-
11 ment, machine, or device that facilitates telecommunications.
12 Telecommunications device includes but is not limited to a com-
13 puter, computer chip or circuit, telephone, cellular telephone,
14 pager, personal communications device, transponder, receiver,
15 radio, modem, or device that enables use of a modem.

16 (f) "Telecommunications service" means providing, allowing,
17 facilitating, or generating any form of telecommunications
18 through the use of telecommunications devices or telecommunica-
19 tions access devices over a telecommunications system.

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

23 (i) Any lawful charge for telecommunications services
24 avoided or attempted to be avoided.

25 (ii) The value of any other money, property, or telecommuni-
26 cations service lost, stolen, or rendered unrecoverable by the
27 violation.

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

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

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

11 (a) House Bill No. 4444.

12 (b) House Bill No. 4446.