

HOUSE BILL No. 4445

March 5, 1997, Introduced by Reps. Nye, Curtis, Profit, Dalman, Green, Kukuk and Walberg and referred to the Committee on Judiciary.

A bill to amend 1931 PA 328, entitled "Michigan penal code," by amending sections 131, 157s, 157w, 174, 177, 178, 181, and 218 (MCL 750.131, 750.157s, 750.157w, 750.174, 750.177, 750.178, 750.181, and 750.218), section 131 as amended by 1984 PA 277 and section 157s as amended and section 157w as added by 1987 PA 276.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 131. (1) A person shall not ~~with intent to~~
2 ~~defraud,~~ make, draw, utter, or deliver any check, draft, or
3 order for the payment of money, to apply on account or otherwise,
4 upon any bank or other depository ~~,~~ WITH INTENT TO DEFRAUD AND
5 knowing at the time of the making, drawing, uttering, or
6 delivering ~~,~~ that the maker or drawer does not have sufficient
7 funds in or credit with the bank or other depository ~~, for the~~

1 ~~payment of~~ TO PAY the check, draft, or order ~~,~~ in full ~~,~~
2 upon its presentation.

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

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

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

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

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

25 (ii) ~~(iii) For a third~~ AN offense ~~which is charged as a~~
26 ~~third offense~~ FOLLOWING 1 OR MORE PRIOR CONVICTIONS UNDER THIS
27 SECTION OR A LOCAL ORDINANCE SUBSTANTIALLY CORRESPONDING TO THIS

1 SECTION, a misdemeanor ~~—~~ punishable by imprisonment for not
2 more than 1 year ~~,~~ or a fine of not more than ~~\$500.00~~
3 \$1,000.00, or both.

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

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

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

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

23 (c) If the amount payable in the check, draft, or order is
24 ~~\$200.00~~ \$500.00 or more, a felony ~~—~~ punishable by imprison-
25 ment for not more than ~~13 months,~~ 2 YEARS or ~~by~~ a fine of not
26 more than ~~\$500.00~~ \$2,000.00 OR 3 TIMES THE AMOUNT PAYABLE,
27 WHICHEVER IS GREATER, or both IMPRISONMENT AND A FINE.

1 (4) IF THE PROSECUTING ATTORNEY INTENDS TO SEEK AN ENHANCED
2 SENTENCE BASED UPON THE DEFENDANT HAVING 1 OR MORE PRIOR CONVIC-
3 TIONS, THE PROSECUTING ATTORNEY SHALL INCLUDE ON THE COMPLAINT
4 AND INFORMATION A STATEMENT LISTING THE PRIOR CONVICTION OR
5 CONVICTIONS. THE EXISTENCE OF THE DEFENDANT'S PRIOR CONVICTION
6 OR CONVICTIONS SHALL BE DETERMINED BY THE COURT, WITHOUT A JURY,
7 AT SENTENCING OR AT A SEPARATE HEARING FOR THAT PURPOSE BEFORE
8 SENTENCING. THE EXISTENCE OF A PRIOR CONVICTION MAY BE ESTAB-
9 LISHED BY ANY EVIDENCE RELEVANT FOR THAT PURPOSE, INCLUDING, BUT
10 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. 157s. (1) A person who, for the purpose of obtaining
17 goods, property, services, or anything of value, knowingly and
18 with intent to defraud uses 1 or more financial transaction
19 devices ~~which~~ THAT have been revoked or canceled by the issuer
20 of the device or devices, as distinguished from expired, and HAS
21 RECEIVED notice of the revocation or cancellation ~~has been~~
22 ~~received by the person,~~ is guilty of a ~~misdemeanor if~~ CRIME AS
23 FOLLOWS:

24 (A) IF the ~~aggregate~~ value of the goods, property, serv-
25 ices, or anything of value is LESS THAN \$100.00, ~~or less, and is~~
26 ~~guilty of a felony, punishable by a fine of not more than~~

1 ~~\$1,000.00, or imprisonment for not more than 1 year, or both, if~~
2 AS FOLLOWS:

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

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

11 (B) IF THE ~~AGGREGATE~~ VALUE OF THE GOODS, PROPERTY, SERV-
12 ICES, OR ANYTHING OF VALUE IS ~~MORE THAN~~ \$100.00 OR MORE BUT
13 LESS THAN \$500.00, AS FOLLOWS:

14 (i) FOR A FIRST OR SECOND OFFENSE, A MISDEMEANOR PUNISHABLE
15 BY IMPRISONMENT FOR NOT MORE THAN 1 YEAR OR A FINE OF NOT MORE
16 THAN \$1,000.00 OR 3 TIMES THE AGGREGATE VALUE OF THE GOODS, PROP-
17 erty, SERVICES, OR ANYTHING OF VALUE, WHICHEVER IS GREATER, OR
18 BOTH IMPRISONMENT AND A FINE.

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

25 (C) IF THE VALUE OF THE GOODS, PROPERTY, SERVICES, OR ANY-
26 THING OF VALUE IS \$500.00 OR MORE, A FELONY PUNISHABLE BY
27 IMPRISONMENT FOR NOT MORE THAN 2 YEARS OR A FINE OF NOT MORE THAN

1 \$2,000.00 OR 3 TIMES THE AGGREGATE VALUE OF THE GOODS, PROPERTY,
2 SERVICES, OR ANYTHING OF VALUE, WHICHEVER IS GREATER, OR BOTH
3 IMPRISONMENT AND A FINE.

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

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

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

20 (B) A TRANSCRIPT OF A PRIOR TRIAL, PLEA-TAKING, OR
21 SENTENCING.

22 (C) INFORMATION CONTAINED IN A PRESENTENCE REPORT.

23 (D) THE DEFENDANT'S STATEMENT.

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

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

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

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

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

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

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

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

26 (ii) THE PERSON VIOLATES SUBDIVISION (B)(i) AND HAS 1 OR
27 MORE PRIOR CONVICTIONS FOR COMMITTING OR ATTEMPTING TO COMMIT AN

1 OFFENSE UNDER THIS SECTION. FOR PURPOSES OF THIS SUBPARAGRAPH,
2 HOWEVER, A PRIOR CONVICTION DOES NOT INCLUDE A CONVICTION FOR A
3 VIOLATION OR ATTEMPTED VIOLATION OF SUBDIVISION (A) OR (B)(ii).

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

8 (i) THE AMOUNT OF FUNDS WITHDRAWN OR TRANSFERRED IS
9 \$20,000.00 OR MORE.

10 (ii) THE PERSON VIOLATES SUBDIVISION (C)(i) AND HAS 2 OR
11 MORE PRIOR CONVICTIONS FOR COMMITTING OR ATTEMPTING TO COMMIT AN
12 OFFENSE UNDER THIS SECTION. FOR PURPOSES OF THIS SUBPARAGRAPH,
13 HOWEVER, A PRIOR CONVICTION DOES NOT INCLUDE A CONVICTION FOR A
14 VIOLATION OR ATTEMPTED VIOLATION OF SUBDIVISION (A) OR (B)(ii).

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

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

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. 174. (1) ~~Any~~ A person who as the agent, servant, or
9 employee of another PERSON, GOVERNMENTAL ENTITY WITHIN THIS
10 STATE, OR OTHER LEGAL ENTITY or WHO as the trustee, bailee, or
11 custodian of the property of another PERSON, ~~or of any partner-~~
12 ~~ship, voluntary association, public or private corporation, or of~~
13 ~~this state, or of any county, city, village, township or school~~
14 ~~district~~ GOVERNMENTAL ENTITY within this state, ~~shall~~ OR OTHER
15 LEGAL ENTITY fraudulently ~~dispose~~ DISPOSES of or ~~convert~~
16 CONVERTS to his OR HER own use, or ~~take or secrete~~ TAKES OR
17 SECRETES with THE intent to convert to his OR HER own use without
18 the consent of his OR HER principal, any money or other personal
19 property of his OR HER principal ~~which shall have~~ THAT HAS come
20 to ~~his~~ THAT PERSON'S possession or ~~shall be~~ THAT IS under his
21 OR HER charge or control by virtue of his OR HER being ~~such~~ AN
22 agent, servant, employee, trustee, bailee, or custodian, ~~as~~
23 ~~aforsaid, shall be~~ IS guilty of ~~the crime of~~ embezzlement. ~~,~~
24 ~~and upon conviction thereof, if~~

25 (2) IF the money or personal property ~~so~~ embezzled ~~shall~~
26 ~~be of the~~ HAS A value of ~~-\$100.00 or under~~ LESS THAN \$200.00,
27 ~~shall be~~ THE PERSON IS guilty of a misdemeanor ~~;~~ ~~if the money~~

1 ~~or personal property so embezzled be of the value of more than~~
2 ~~\$100.00, such~~ PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 93
3 DAYS OR A FINE OF NOT MORE THAN \$500.00 OR 3 TIMES THE VALUE OF
4 THE MONEY OR PROPERTY EMBEZZLED, WHICHEVER IS GREATER, OR BOTH
5 IMPRISONMENT AND A FINE.

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

11 (A) THE MONEY OR PERSONAL PROPERTY EMBEZZLED HAS A VALUE OF
12 \$200.00 OR MORE BUT 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 SECTION OR A LOCAL ORDINANCE SUBSTANTIALLY
16 CORRESPONDING TO THIS SECTION.

17 (4) IF ANY OF THE FOLLOWING APPLY, THE person ~~shall be~~ IS
18 guilty of a felony ~~—~~ punishable by imprisonment ~~in the state~~
19 ~~prison~~ FOR not more than ~~10~~ 5 years or ~~by~~ a fine OF not
20 ~~exceeding \$5,000.00.~~ MORE THAN \$10,000.00 OR 3 TIMES THE VALUE
21 OF THE MONEY OR PROPERTY EMBEZZLED, WHICHEVER IS GREATER, OR BOTH
22 IMPRISONMENT AND A FINE:

23 (A) THE MONEY OR PERSONAL PROPERTY EMBEZZLED HAS A VALUE OF
24 \$1,000.00 OR MORE 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 SECTION. FOR PURPOSES OF THIS SUBDIVISION,

1 HOWEVER, A PRIOR CONVICTION DOES NOT INCLUDE A CONVICTION FOR A
2 VIOLATION OR ATTEMPTED VIOLATION OF SUBSECTION (2) OR (3)(B).

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

8 (A) THE MONEY OR PERSONAL PROPERTY EMBEZZLED HAS A VALUE OF
9 \$20,000.00 OR MORE.

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

15 (6) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, THE
16 VALUES OF MONEY OR PERSONAL PROPERTY EMBEZZLED IN SEPARATE INCI-
17 DENTS PURSUANT TO A SCHEME OR COURSE OF CONDUCT WITHIN ANY
18 12-MONTH PERIOD MAY BE AGGREGATED TO DETERMINE THE TOTAL VALUE OF
19 MONEY OR PERSONAL PROPERTY EMBEZZLED. IF THE SCHEME OR COURSE OF
20 CONDUCT IS DIRECTED AGAINST ONLY 1 PERSON, GOVERNMENTAL ENTITY
21 WITHIN THIS STATE, OR OTHER LEGAL ENTITY, NO TIME LIMIT APPLIES
22 TO AGGREGATION UNDER THIS SUBSECTION.

23 (7) IF THE PROSECUTING ATTORNEY INTENDS TO SEEK AN ENHANCED
24 SENTENCE BASED UPON THE DEFENDANT HAVING 1 OR MORE PRIOR CONVIC-
25 TIONS, THE PROSECUTING ATTORNEY SHALL INCLUDE ON THE COMPLAINT
26 AND INFORMATION A STATEMENT LISTING THE PRIOR CONVICTION OR
27 CONVICTIONS. THE EXISTENCE OF THE DEFENDANT'S PRIOR CONVICTION

1 OR CONVICTIONS SHALL BE DETERMINED BY THE COURT, WITHOUT A JURY,
2 AT SENTENCING OR AT A SEPARATE HEARING FOR THAT PURPOSE BEFORE
3 SENTENCING. THE EXISTENCE OF A PRIOR CONVICTION MAY BE ESTAB-
4 LISHED BY ANY EVIDENCE RELEVANT FOR THAT PURPOSE, INCLUDING, BUT
5 NOT LIMITED TO, 1 OR MORE OF THE FOLLOWING:

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

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

9 (C) INFORMATION CONTAINED IN A PRESENTENCE REPORT.

10 (D) THE DEFENDANT'S STATEMENT.

11 (8) In ~~any~~ A prosecution under this section, the failure,
12 neglect, or refusal of ~~such~~ THE agent, servant, employee,
13 trustee, bailee, or custodian to pay, deliver, or refund to his
14 OR HER principal ~~such~~ THE money or property entrusted to his OR
15 HER care upon demand ~~shall be~~ IS prima facie proof of intent to
16 embezzle.

17 Sec. 177. (1) ~~Any~~ A person ~~who~~ shall NOT embezzle ~~,~~
18 OR fraudulently remove, conceal, or dispose of any personal prop-
19 erty held by him OR HER subject to ~~any~~ A chattel mortgage or
20 written instrument intended to operate as a chattel mortgage, ~~or~~
21 ~~any~~ A lease or written instrument intended to operate as a
22 lease, or ~~any~~ A contract to purchase not yet fulfilled with
23 intent to injure or defraud the mortgagee, lessor, or vendor
24 under ~~such~~ THE contract or any assignee ~~thereof, shall, if the~~
25 ~~property so embezzled, removed, concealed or disposed of, is of~~
26 ~~the value of more than \$100.00, be~~ OF THE MORTGAGEE, LESSOR, OR
27 VENDOR.

1 (2) IF ANY OF THE FOLLOWING APPLY, THE PERSON IS guilty of a
2 felony ~~—,~~ punishable by imprisonment ~~in the state prison~~ FOR
3 not more than ~~—2—~~ 10 years ~~—,~~ or ~~—by—~~ a fine of not more than
4 ~~—\$1,000.00.—~~ \$15,000.00 OR 3 TIMES THE VALUE OF THE PROPERTY
5 EMBEZZLED, REMOVED, CONCEALED, OR DISPOSED OF, WHICHEVER IS
6 GREATER, OR BOTH IMPRISONMENT AND A FINE:

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

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

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

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

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

26 (4) IF ANY OF THE FOLLOWING APPLY, THE PERSON IS GUILTY OF A
27 MISDEMEANOR PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 1 YEAR

1 OR A FINE OF NOT MORE THAN \$2,000.00 OR 3 TIMES THE VALUE OF THE
2 PROPERTY EMBEZZLED, REMOVED, CONCEALED, OR DISPOSED OF, WHICHEVER
3 IS GREATER, OR BOTH IMPRISONMENT AND A FINE:

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

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

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

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

25 (7) IF THE PROSECUTING ATTORNEY INTENDS TO SEEK AN ENHANCED
26 SENTENCE BASED UPON THE DEFENDANT HAVING 1 OR MORE PRIOR
27 CONVICTIONS, THE PROSECUTING ATTORNEY SHALL INCLUDE ON THE

1 COMPLAINT AND INFORMATION A STATEMENT LISTING THE PRIOR
2 CONVICTION OR CONVICTIONS. THE EXISTENCE OF THE DEFENDANT'S
3 PRIOR CONVICTION OR CONVICTIONS SHALL BE DETERMINED BY THE COURT,
4 WITHOUT A JURY, AT SENTENCING OR AT A SEPARATE HEARING FOR THAT
5 PURPOSE BEFORE SENTENCING. THE EXISTENCE OF A PRIOR CONVICTION
6 MAY BE ESTABLISHED BY ANY EVIDENCE RELEVANT FOR THAT PURPOSE,
7 INCLUDING, BUT NOT LIMITED TO, 1 OR MORE OF THE FOLLOWING:

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

9 (B) A TRANSCRIPT OF A PRIOR TRIAL, PLEA-TAKING, OR
10 SENTENCING.

11 (C) INFORMATION CONTAINED IN A PRESENTENCE REPORT.

12 (D) THE DEFENDANT'S STATEMENT.

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

23 (2) IF ANY OF THE FOLLOWING APPLY, THE PERSON IS guilty of a
24 felony ~~,~~ punishable by imprisonment ~~in the state prison~~ FOR
25 not more than ~~2~~ 10 years or ~~by~~ a fine of not more than
26 ~~\$1,000.00.~~ \$15,000.00 OR 3 TIMES THE VALUE OF THE PROPERTY

1 EMBEZZLED, REMOVED, CONCEALED, OR DISPOSED OF, WHICHEVER IS
2 GREATER, OR BOTH IMPRISONMENT AND A FINE:

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

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

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

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

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

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:

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 SECTION OR A LOCAL ORDINANCE SUBSTANTIALLY
6 CORRESPONDING TO THIS SECTION.

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,

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

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 SECTION OR A LOCAL ORDINANCE SUBSTANTIALLY
16 CORRESPONDING TO THIS SECTION.

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 SECTION. FOR PURPOSES OF THIS SUBDIVISION,

1 HOWEVER, A PRIOR CONVICTION DOES NOT INCLUDE A CONVICTION FOR A
2 VIOLATION OR ATTEMPTED VIOLATION OF SUBSECTION (2) OR (3)(B).

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

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

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

16 (6) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, THE
17 VALUES OF MONEY OR PROPERTY EMBEZZLED, DISPOSED OF, CONVERTED,
18 TAKEN, OR SECRETED IN SEPARATE INCIDENTS PURSUANT TO A SCHEME OR
19 COURSE OF CONDUCT WITHIN ANY 12-MONTH PERIOD MAY BE AGGREGATED TO
20 DETERMINE THE TOTAL VALUE OF MONEY OR PERSONAL PROPERTY EMBEZZ-
21 ZLED, DISPOSED OF, CONVERTED, TAKEN, OR SECRETED. IF THE SCHEME
22 OR COURSE OF CONDUCT IS DIRECTED AGAINST ONLY 1 PERSON, GOVERN-
23 MENTAL ENTITY WITHIN THIS STATE, OR OTHER LEGAL ENTITY, NO TIME
24 LIMIT APPLIES TO AGGREGATION UNDER THIS SUBSECTION.

25 (7) IF THE PROSECUTING ATTORNEY INTENDS TO SEEK AN ENHANCED
26 SENTENCE BASED UPON THE DEFENDANT HAVING 1 OR MORE PRIOR
27 CONVICTIONS, THE PROSECUTING ATTORNEY SHALL INCLUDE ON THE

1 COMPLAINT AND INFORMATION A STATEMENT LISTING THE PRIOR
2 CONVICTION OR CONVICTIONS. THE EXISTENCE OF THE DEFENDANT'S
3 PRIOR CONVICTION OR CONVICTIONS SHALL BE DETERMINED BY THE COURT,
4 WITHOUT A JURY, AT SENTENCING OR AT A SEPARATE HEARING FOR THAT
5 PURPOSE BEFORE SENTENCING. THE EXISTENCE OF A PRIOR CONVICTION
6 MAY BE ESTABLISHED BY ANY EVIDENCE RELEVANT FOR THAT PURPOSE,
7 INCLUDING, BUT NOT LIMITED TO, 1 OR MORE OF THE FOLLOWING:

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

9 (B) A TRANSCRIPT OF A PRIOR TRIAL, PLEA-TAKING, OR
10 SENTENCING.

11 (C) INFORMATION CONTAINED IN A PRESENTENCE REPORT.

12 (D) THE DEFENDANT'S STATEMENT.

13 (8) In ~~any~~ A prosecution ~~for such crime it shall be no~~
14 UNDER THIS SECTION, IT IS NOT A defense that ~~such~~ THE agent,
15 servant, employee, trustee, bailee, custodian, attorney-at-law,
16 collector, or other person was entitled to a compensation out of
17 ~~such~~ THE money or personal property as compensation for col-
18 lecting or receiving ~~the same~~ IT for ~~and on behalf of the~~ ITS
19 owner, ~~thereof,~~ but it ~~shall be no~~ IS NOT embezzlement ~~on~~
20 ~~the part of such~~ BY THE agent, servant, employee, trustee,
21 bailee, custodian, attorney-at-law, collector, or other person to
22 retain his OR HER reasonable collection fee on the collection or
23 any other valid interest he ~~may have~~ OR SHE HAS in ~~such~~ THE
24 money or personal property.

25 (9) In ~~any~~ A prosecution under this section, the failure,
26 neglect, or refusal of ~~such~~ THE agent, servant, employee,
27 trustee, bailee, custodian, attorney-at-law, collector, or other

1 person to pay, deliver, or refund to the proper person ~~such~~ THE
 2 money or personal property entrusted to his OR HER care, upon
 3 demand, ~~shall be~~ IS prima facie proof of intent to embezzle.

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

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

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

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

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

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

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

10 (3) 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, WHICH-
13 EVER IS GREATER, OR BOTH IMPRISONMENT AND A FINE:

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

18 (B) THE PERSON VIOLATES SUBSECTION (2) AND HAS 1 OR MORE
19 PRIOR CONVICTIONS FOR COMMITTING OR ATTEMPTING TO COMMIT AN
20 OFFENSE UNDER THIS SECTION OR A LOCAL ORDINANCE SUBSTANTIALLY
21 CORRESPONDING TO THIS SECTION.

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

26 (A) THE LAND, INTEREST IN LAND, MONEY, PERSONAL PROPERTY,
27 USE OF THE INSTRUMENT, FACILITY, ARTICLE, OR VALUABLE THING,

1 SERVICE, LARGER AMOUNT OBTAINED, OR SMALLER AMOUNT SOLD OR
2 DISPOSED OF HAS A VALUE OF \$1,000.00 OR MORE BUT LESS THAN
3 \$20,000.00.

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

9 (5) 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, WHICHEVER
12 IS GREATER, OR BOTH IMPRISONMENT AND A FINE:

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

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

25 (6) THE VALUES OF LAND, INTEREST IN LAND, MONEY, PERSONAL
26 PROPERTY, USE OF THE INSTRUMENT, FACILITY, ARTICLE, OR VALUABLE
27 THING, SERVICE, LARGER AMOUNT OBTAINED, OR SMALLER AMOUNT SOLD OR

1 DISPOSED OF IN SEPARATE INCIDENTS PURSUANT TO A SCHEME OR COURSE
 2 OF CONDUCT WITHIN ANY 12-MONTH PERIOD MAY BE AGGREGATED TO DETER-
 3 MINE THE TOTAL VALUE INVOLVED IN THE VIOLATION OF THIS SECTION.

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 Enacting section 1. This amendatory act takes effect
 20 January 1, 1998.

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

24 (a) Senate Bill No. _____ or House Bill No. _____
 25 (request no. 01762'97).

26 (b) Senate Bill No. _____ or House Bill No. _____
 27 (request no. 01764'97).