

SENATE BILL No. 454

May 3, 2005, Introduced by Senators GARCIA, GOSCHKA, TOY and KUIPERS and referred to the Committee on Judiciary.

A bill to amend 1931 PA 328, entitled
"The Michigan penal code,"
by amending section 174 (MCL 750.174), as amended by 1998 PA 312.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 174. (1) A person who as the agent, servant, or employee
2 of another person, governmental entity within this state, or other
3 legal entity or who as the trustee, bailee, or custodian of the
4 property of another person, governmental entity within this state,
5 or other legal entity fraudulently disposes of or converts to his
6 or her own use, or takes or secretes with the intent to convert to
7 his or her own use without the consent of his or her principal, any
8 money or other personal property of his or her principal that has

1 come to that person's possession or that is under his or her charge
2 or control by virtue of his or her being an agent, servant,
3 employee, trustee, bailee, or custodian, is guilty of embezzlement.

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

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

14 (a) The money or personal property embezzled has a value of
15 \$200.00 or more but less than \$1,000.00.

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

20 **(C) THE PERSON VIOLATES SUBSECTION (2) AND THE VICTIM IS A**
21 **NONPROFIT CORPORATION ORGANIZED UNDER SECTION 501(C) (3) OF THE**
22 **INTERNAL REVENUE CODE, 26 USC 501.**

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

1 (a) The money or personal property embezzled has a value of
2 \$1,000.00 or more but less than \$20,000.00.

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

8 **(C) THE PERSON VIOLATES SUBSECTION (3)(A) AND THE VICTIM IS A**
9 **NONPROFIT CORPORATION ORGANIZED UNDER SECTION 501(C)(3) OF THE**
10 **INTERNAL REVENUE CODE, 26 USC 501.**

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

16 (a) The money or personal property embezzled has a value of
17 \$20,000.00 or more.

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

23 **(C) THE PERSON VIOLATES SUBSECTION (4)(A) AND THE VICTIM IS A**
24 **NONPROFIT CORPORATION ORGANIZED UNDER SECTION 501(C)(3) OF THE**
25 **INTERNAL REVENUE CODE, 26 USC 501.**

26 (6) Except as otherwise provided in this subsection, the
27 values of money or personal property embezzled in separate

1 incidents pursuant to a scheme or course of conduct within any 12-
2 month period may be aggregated to determine the total value of
3 money or personal property embezzled. If the scheme or course of
4 conduct is directed against only 1 person, governmental entity
5 within this state, or other legal entity, no time limit applies to
6 aggregation under this subsection.

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

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

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

19 (c) Information contained in a presentence report.

20 (d) The defendant's statement.

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

26 (9) If the sentence for a conviction under this section is
27 enhanced by 1 or more prior convictions, those prior convictions

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