HOUSE BILL NO. 4105

January 29, 2019, Introduced by Reps. Berman, Farrington, Guerra, Marino, LaFave and Wittenberg and referred to the Committee on Financial Services.

A bill to amend 1931 PA 328, entitled

"The Michigan penal code,"

by amending section 174 (MCL 750.174), as amended by 2006 PA 573.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

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

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

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

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

(c) The person violates subsection (2) and the victim is a nonprofit corporation or charitable organization under federal law or the laws of this state.

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

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

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

(c) The person violates subsection (3)(a) and the victim is a nonprofit corporation or charitable organization under federal law or the laws of this state.

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

(a) The money or **other** personal property embezzled has a value of $20,000.00 or more but less than $50,000.00.

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

(c) The person violates subsection (4)(a) and the victim is a nonprofit corporation or charitable organization under federal law or the laws of this state.

(6) If the money or **other** personal property embezzled has a value of $50,000.00 or more but less than $100,000.00, the person is guilty of a felony punishable by imprisonment for not more than 15 years or a fine of not more than $25,000.00 or 3 times the value

of the money or property embezzled, whichever is greater, or both imprisonment and a fine.

(7) If the money or **other** personal property embezzled has a value of $100,000.00 or more, the person is guilty of a felony punishable by imprisonment for not more than 20 years or a fine of not more than $50,000.00 or 3 times the value of the money or property embezzled, whichever is greater, or both imprisonment and a fine.

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

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

(a) A copy of the judgment of conviction.

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

(c) Information contained in a presentence report.

(d) The defendant's statement.

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

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

(12) The court may order a term of imprisonment imposed for a felony violation of this section to be served consecutively to any term of imprisonment imposed for any other criminal offense if the victim of the violation of this section was any of the following:

(a) A nonprofit corporation or charitable organization under federal law or the laws of this state.

(b) A person 60 years of age or older.

(c) A vulnerable adult as defined in section 174a.

(13) As used in this section:

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

(b) "Money or other personal property" includes cryptocurrency.

Enacting section 1. This amendatory act takes effect 90 days after the date it is enacted into law.