

THE MICHIGAN PENAL CODE (EXCERPT)
Act 328 of 1931

750.157w Fraudulent use of financial transaction device to withdraw or transfer funds in violation of contractual limitations.

Sec. 157w. (1) A person who knowingly and with intent to defraud uses a financial transaction device to withdraw or transfer funds from a deposit account in violation of the contractual limitations imposed on the amount or frequency of withdrawals or transfers or in an amount exceeding the funds then on deposit in the account is guilty of a crime as follows:

(a) A misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$500.00 or 3 times the amount of funds withdrawn or transferred, whichever is greater, or both imprisonment and a fine, if the amount of the funds withdrawn or transferred is less than \$200.00.

(b) 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by imprisonment for not more than 1 year or a fine of not more than \$2,000.00 or 3 times the amount of funds withdrawn or transferred, whichever is greater, or both imprisonment and a fine, if any of the following apply:

(i) The amount of the funds withdrawn or transferred is \$200.00 or more but less than \$1,000.00.

(ii) The person violates subdivision (a) 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) 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by imprisonment for not more than 5 years or a fine of not more than \$10,000.00 or 3 times the amount of funds withdrawn or transferred, whichever is greater, or both imprisonment and a fine, if any of the following apply:

(i) The amount of the funds withdrawn or transferred is \$1,000.00 or more but less than \$20,000.00.

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

(d) 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by imprisonment for not more than 10 years or a fine of not more than \$15,000.00 or 3 times the amount of funds withdrawn or transferred, whichever is greater, or both imprisonment and a fine, if any of the following apply:

(i) The amount of funds withdrawn or transferred is \$20,000.00 or more.

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

(2) The amounts of funds withdrawn or transferred in separate incidents pursuant to a scheme or course of conduct within any 12-month period may be aggregated to determine the total amount of funds withdrawn or transferred.

(3) 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 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.

(4) If the sentence for a conviction under this section is enhanced by 1 or more prior convictions, those prior convictions shall not be used to further enhance the sentence for the conviction pursuant to 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.

History: Add. 1987, Act 276, Eff. Mar. 30, 1988;—Am. 1998, Act 312, Eff. Jan. 1, 1999.