

**SUBSTITUTE FOR
SENATE BILL NO. 454**

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

Senate Bill No. 454 as amended September 12, 2006

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 <<OR CHARITABLE ORGANIZATION UNDER FEDERAL LAW OR
22 THE LAWS OF THIS STATE. >>

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:

Senate Bill No. 454 as amended September 12, 2006

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 <<OR CHARITABLE ORGANIZATION UNDER FEDERAL LAW OR**
10 **THE LAWS OF THIS STATE. >>**

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 **BUT LESS THAN \$50,000.00.**

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 <<OR CHARITABLE ORGANIZATION UNDER FEDERAL LAW OR**
25 **THE LAWS OF THIS STATE. >>**

26 **(6) IF THE MONEY OR PERSONAL PROPERTY EMBEZZLED HAS A VALUE OF**
27 **\$50,000.00 OR MORE BUT LESS THAN \$100,000.00, THE PERSON IS GUILTY**

1 OF A FELONY PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 15 YEARS
2 OR A FINE OF NOT MORE THAN \$25,000.00 OR 3 TIMES THE VALUE OF THE
3 MONEY OR PROPERTY EMBEZZLED, WHICHEVER IS GREATER, OR BOTH
4 IMPRISONMENT AND A FINE.

5 (7) IF THE MONEY OR PERSONAL PROPERTY EMBEZZLED HAS A VALUE OF
6 \$100,000.00 OR MORE, THE PERSON IS GUILTY OF A FELONY PUNISHABLE BY
7 IMPRISONMENT FOR NOT MORE THAN 20 YEARS OR A FINE OF NOT MORE THAN
8 \$50,000.00 OR 3 TIMES THE VALUE OF THE MONEY OR PROPERTY EMBEZZLED,
9 WHICHEVER IS GREATER, OR BOTH IMPRISONMENT AND A FINE.

10 (8) ~~—(6)—~~ Except as otherwise provided in this subsection, the
11 values of money or personal property embezzled in separate
12 incidents pursuant to a scheme or course of conduct within any 12-
13 month period may be aggregated to determine the total value of
14 money or personal property embezzled. If the scheme or course of
15 conduct is directed against only 1 person, governmental entity
16 within this state, or other legal entity, no time limit applies to
17 aggregation under this subsection.

18 (9) ~~—(7)—~~ If the prosecuting attorney intends to seek an
19 enhanced sentence based upon the defendant having 1 or more prior
20 convictions, the prosecuting attorney shall include on the
21 complaint and information a statement listing the prior conviction
22 or convictions. The existence of the defendant's prior conviction
23 or convictions shall be determined by the court, without a jury, at
24 sentencing or at a separate hearing for that purpose before
25 sentencing. The existence of a prior conviction may be established
26 by any evidence relevant for that purpose, including, but not
27 limited to, 1 or more of the following:

Senate Bill No. 454 as amended September 12, 2006

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

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

3 (c) Information contained in a presentence report.

4 (d) The defendant's statement.

5 (10) ~~—(8)—~~ In a prosecution under this section, the failure,
6 neglect, or refusal of the agent, servant, employee, trustee,
7 bailee, or custodian to pay, deliver, or refund to his or her
8 principal the money or property entrusted to his or her care upon
9 demand is prima facie proof of intent to embezzle.

10 (11) ~~—(9)—~~ If the sentence for a conviction under this section
11 is enhanced by 1 or more prior convictions, those prior convictions
12 shall not be used to further enhance the sentence for the
13 conviction ~~pursuant to~~ **UNDER** section 10, 11, or 12 of chapter IX
14 of the code of criminal procedure, 1927 PA 175, MCL 769.10, 769.11,
15 and 769.12.

16 (12) **THE COURT MAY ORDER A TERM OF IMPRISONMENT IMPOSED FOR A**
17 **FELONY VIOLATION OF THIS SECTION TO BE SERVED CONSECUTIVELY TO ANY**
18 **TERM OF IMPRISONMENT IMPOSED FOR ANY OTHER CRIMINAL OFFENSE IF THE**
19 **VICTIM OF THE VIOLATION OF THIS SECTION WAS ANY OF THE FOLLOWING:**

20 (A) A NONPROFIT CORPORATION **<<OR CHARITABLE ORGANIZATION UNDER**
21 **FEDERAL LAW OR THE LAWS OF THIS STATE. >>**

22 (B) A PERSON 60 YEARS OF AGE OR OLDER.

23 (C) A VULNERABLE ADULT AS DEFINED IN SECTION 174A.