

**§358. Theft by misapplication of property****1. A person is guilty of theft if:**

A. The person obtains property from anyone or personal services from an employee upon agreement, or subject to a known legal obligation, to make a specified payment or other disposition to a 3rd person or to a fund administered by that person, whether from that property or its proceeds or from that person's own property to be reserved in an equivalent or agreed amount, if that person intentionally or recklessly fails to make the required payment or disposition and deals with the property obtained or withheld as that person's own. Violation of this paragraph is a Class E crime; or [PL 2001, c. 383, §43 (NEW); PL 2001, c. 383, §156 (AFF).]

**B. The person violates paragraph A and:**

(1) The value of the property is more than \$10,000. Violation of this subparagraph is a Class B crime;

(2) The property stolen is a firearm or an explosive device. Violation of this subparagraph is a Class B crime;

(3) The person is armed with a dangerous weapon at the time of the offense. Violation of this subparagraph is a Class B crime;

(4) The value of the property is more than \$2,000 and the person is a payroll processor. Violation of this paragraph is a Class B crime;

(5) The value of the property is more than \$1,000 but not more than \$10,000. Violation of this subparagraph is a Class C crime;

(6) The value of the property is more than \$500 but not more than \$1,000. Violation of this subparagraph is a Class D crime;

(7) The value of the property is more than \$1,000 but not more than \$2,000 and the person is a payroll processor. Violation of this subparagraph is a Class C crime;

(8) The person is a payroll processor and has 2 or more prior convictions for any combination of the Maine offenses listed in this subparagraph or for engaging in substantially similar conduct to that of the Maine offenses listed in this subparagraph in another jurisdiction. The Maine offenses are: theft; any violation of section 401 in which the crime intended to be committed inside the structure is theft; any violation of section 405 in which the crime intended to be committed inside the motor vehicle is theft; any violation of section 651; any violation of section 702, 703 or 708; or attempts to commit any of these crimes. Section 9-A governs the use of prior convictions when determining a sentence. Violation of this subparagraph is a Class B crime; or

(9) The person has 2 or more prior convictions for any combination of the Maine offenses listed in this subparagraph or for engaging in substantially similar conduct to that of the Maine offenses listed in this subparagraph in another jurisdiction. The Maine offenses are: theft; any violation of section 401 in which the crime intended to be committed inside the structure is theft; any violation of section 405 in which the crime intended to be committed inside the motor vehicle is theft; any violation of section 651; any violation of section 702, 703 or 708; or attempts to commit any of these crimes. Section 9-A governs the use of prior convictions when determining a sentence. Violation of this subparagraph is a Class C crime. [PL 2007, c. 476, §16 (AMD).]

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2. Liability under subsection 1 is not affected by the fact that it may be impossible to identify particular property as belonging to the victim at the time of the failure to make the required payment or disposition.

[PL 1975, c. 499, §1 (NEW).]

3. Proof that a person is an officer or employee of the government or of a financial institution gives rise to a permissible inference under the Maine Rules of Evidence, Rule 303 that the person:

A. Knows of any legal obligation relevant to the person's liability under this section; and [PL 2001, c. 383, §44 (AMD); PL 2001, c. 383, §156 (AFF).]

B. Dealt with the property as the person's own if the person fails to pay or account upon lawful demand, or if an audit reveals a shortage or falsification of the person's accounts. [PL 2001, c. 383, §44 (AMD); PL 2001, c. 383, §156 (AFF).]

[PL 2001, c. 383, §44 (AMD); PL 2001, c. 383, §156 (AFF).]

4. "Payroll processor" has the same meaning as in Title 10, section 1495.

[PL 2001, c. 383, §45 (NEW); PL 2001, c. 383, §156 (AFF).]

#### SECTION HISTORY

PL 1975, c. 499, §1 (NEW). PL 2001, c. 383, §§43-45 (AMD). PL 2001, c. 383, §156 (AFF). PL 2001, c. 667, §D9 (AMD). PL 2001, c. 667, §D36 (AFF). PL 2007, c. 476, §16 (AMD).

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