

SENATE BILL No. 249

March 9, 2011, Introduced by Senators BOOHER, RICHARDVILLE, MARLEAU, NOFS, PAPPAGEORGE, HUNTER, HANSEN, ROCCA and GLEASON and referred to the Committee on Banking and Financial Institutions.

A bill to amend 1931 PA 328, entitled "The Michigan penal code," by amending section 218 (MCL 750.218), as amended by 2004 PA 154.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 218. (1) A person who, with the intent to defraud or
2 cheat makes or uses a false pretense to do 1 or more of the
3 following is guilty of a crime punishable as provided in this
4 section:

5 (a) Cause a person to grant, convey, assign, demise, lease, or
6 mortgage land or an interest in land.

7 (b) Obtain a person's signature on a forged written
8 instrument.

9 (c) Obtain from a person any money or personal property or the
10 use of any instrument, facility, article, or other valuable thing

1 or service.

2 (d) By means of a false weight or measure obtain a larger
3 amount or quantity of property than was bargained for.

4 (e) By means of a false weight or measure sell or dispose of a
5 smaller amount or quantity of property than was bargained for.

6 (2) If the land, interest in land, money, personal property,
7 use of the instrument, facility, article, or valuable thing,
8 service, larger amount obtained, or smaller amount sold or disposed
9 of has a value of less than \$200.00, the person is guilty of a
10 misdemeanor punishable by imprisonment for not more than 93 days or
11 a fine of not more than \$500.00 or 3 times the value, whichever is
12 greater, or both imprisonment and a fine.

13 (3) If any of the following apply, the person is guilty of a
14 misdemeanor punishable by imprisonment for not more than 1 year or
15 a fine of not more than \$2,000.00 or 3 times the value, whichever
16 is greater, or both imprisonment and a fine:

17 (a) The land, interest in land, money, personal property, use
18 of the instrument, facility, article, or valuable thing, service,
19 larger amount obtained, or smaller amount sold or disposed of has a
20 value of \$200.00 or more but less than \$1,000.00.

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

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

1 greater, or both imprisonment and a fine:

2 (a) The land, interest in land, money, personal property, use
3 of the instrument, facility, article, or valuable thing, service,
4 larger amount obtained, or smaller amount sold or disposed of has a
5 value of \$1,000.00 or more but less than \$20,000.00.

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

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

15 (a) The land, interest in land, money, personal property, use
16 of the instrument, facility, article, or valuable thing, service,
17 larger amount obtained, or smaller amount sold or disposed of has a
18 value of \$20,000.00 or more **BUT LESS THAN \$50,000.00.**

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

24 **(6) IF ANY OF THE FOLLOWING APPLY, THE PERSON IS GUILTY OF A**
25 **FELONY PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 15 YEARS OR A**
26 **FINE OF NOT MORE THAN \$25,000.00 OR 3 TIMES THE VALUE, WHICHEVER IS**
27 **GREATER, OR BOTH IMPRISONMENT AND A FINE:**

1 (A) THE LAND, INTEREST IN LAND, MONEY, PERSONAL PROPERTY, USE
2 OF THE INSTRUMENT, FACILITY, ARTICLE, OR VALUABLE THING, SERVICE,
3 LARGER AMOUNT OBTAINED, OR SMALLER AMOUNT SOLD OR DISPOSED OF HAS A
4 VALUE OF \$50,000.00 OR MORE BUT LESS THAN \$100,000.00.

5 (B) THE PERSON VIOLATES SUBSECTION (5) (A) AND HAS 2 OR MORE
6 PRIOR CONVICTIONS FOR COMMITTING OR ATTEMPTING TO COMMIT AN OFFENSE
7 UNDER THIS SECTION. FOR PURPOSES OF THIS SUBDIVISION, HOWEVER, A
8 PRIOR CONVICTION DOES NOT INCLUDE A CONVICTION FOR A VIOLATION OR
9 ATTEMPTED VIOLATION OF SUBSECTION (2) OR (3) (B).

10 (7) IF ANY OF THE FOLLOWING APPLY, THE PERSON IS GUILTY OF A
11 FELONY PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 20 YEARS OR A
12 FINE OF NOT MORE THAN \$35,000.00 OR 3 TIMES THE VALUE, WHICHEVER IS
13 GREATER, OR BOTH IMPRISONMENT AND A FINE:

14 (A) THE LAND, INTEREST IN LAND, MONEY, PERSONAL PROPERTY, USE
15 OF THE INSTRUMENT, FACILITY, ARTICLE, OR VALUABLE THING, SERVICE,
16 LARGER AMOUNT OBTAINED, OR SMALLER AMOUNT SOLD OR DISPOSED OF HAS A
17 VALUE OF \$100,000.00 OR MORE.

18 (B) THE PERSON VIOLATES SUBSECTION (6) (A) AND HAS 2 OR MORE
19 PRIOR CONVICTIONS FOR COMMITTING OR ATTEMPTING TO COMMIT AN OFFENSE
20 UNDER THIS SECTION. FOR PURPOSES OF THIS SUBDIVISION, HOWEVER, A
21 PRIOR CONVICTION DOES NOT INCLUDE A CONVICTION FOR A VIOLATION OR
22 ATTEMPTED VIOLATION OF SUBSECTION (2) OR (3) (B).

23 (8) ~~(6)~~—The values of land, interest in land, money, personal
24 property, use of the instrument, facility, article, or valuable
25 thing, service, larger amount obtained, or smaller amount sold or
26 disposed of in separate incidents pursuant to a scheme or course of
27 conduct within any 12-month period may be aggregated to determine

1 the total value involved in the violation of this section.

2 (9) ~~(7)~~—If the prosecuting attorney intends to seek an
3 enhanced sentence based upon the defendant having 1 or more prior
4 convictions, the prosecuting attorney shall include on the
5 complaint and information a statement listing the prior conviction
6 or convictions. The existence of the defendant's prior conviction
7 or convictions shall be determined by the court, without a jury, at
8 sentencing or at a separate hearing for that purpose before
9 sentencing. The existence of a prior conviction may be established
10 by any evidence relevant for that purpose, including, but not
11 limited to, 1 or more of the following:

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

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

14 (c) Information contained in a presentence report.

15 (d) The defendant's statement.

16 (10) ~~(8)~~—If the sentence for a conviction under this section
17 is enhanced by 1 or more prior convictions, those prior convictions
18 shall not be used to further enhance the sentence for the
19 conviction ~~pursuant to~~ **UNDER** section 10, 11, or 12 of chapter IX of
20 the code of criminal procedure, 1927 PA 175, MCL 769.10, 769.11,
21 and 769.12.

22 (11) ~~(9)~~—As used in this section, "false pretense" includes,
23 but is not limited to, a false or fraudulent representation,
24 writing, communication, statement, or message, communicated by any
25 means to another person, that the maker of the representation,
26 writing, communication, statement, or message knows is false or
27 fraudulent. The false pretense may be a representation regarding a

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1 past or existing fact or circumstance or a representation regarding
2 the intention to perform a future event or to have a future event
3 performed.

[Enacting section 1. This amendatory act takes effect January 1,
2012.]