

**STATE OF MICHIGAN
96TH LEGISLATURE
REGULAR SESSION OF 2011**

Introduced by Senators Booher, Richardville, Marleau, Nofs, Pappageorge, Hunter, Hansen, Rocca and Gleason

ENROLLED SENATE BILL No. 249

AN ACT to amend 1931 PA 328, entitled "An act to revise, consolidate, codify, and add to the statutes relating to crimes; to define crimes and prescribe the penalties and remedies; to provide for restitution under certain circumstances; to provide for the competency of evidence at the trial of persons accused of crime; to provide immunity from prosecution for certain witnesses appearing at criminal trials; to provide for liability for damages; and to repeal certain acts and parts of acts inconsistent with or contravening any of the provisions of this act," by amending section 218 (MCL 750.218), as amended by 2004 PA 154.

The People of the State of Michigan enact:

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

- (a) Cause a person to grant, convey, assign, demise, lease, or mortgage land or an interest in land.
- (b) Obtain a person's signature on a forged written instrument.
- (c) Obtain from a person any money or personal property or the use of any instrument, facility, article, or other valuable thing or service.
- (d) By means of a false weight or measure obtain a larger amount or quantity of property than was bargained for.
- (e) By means of a false weight or measure sell or dispose of a smaller amount or quantity of property than was bargained for.

(2) If the land, interest in land, money, personal property, use of the instrument, facility, article, or valuable thing, service, larger amount obtained, or smaller amount sold or disposed of 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, 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, whichever is greater, or both imprisonment and a fine:

- (a) The land, interest in land, money, personal property, use of the instrument, facility, article, or valuable thing, service, larger amount obtained, or smaller amount sold or disposed of 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.

(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, whichever is greater, or both imprisonment and a fine:

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

(b) The person violates subsection (3)(a) 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).

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

(a) The land, interest in land, money, personal property, use of the instrument, facility, article, or valuable thing, service, larger amount obtained, or smaller amount sold or disposed of has a value of \$20,000.00 or more but less than \$50,000.00.

(b) The person violates subsection (4)(a) 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).

(6) If any of the following apply, 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, whichever is greater, or both imprisonment and a fine:

(a) The land, interest in land, money, personal property, use of the instrument, facility, article, or valuable thing, service, larger amount obtained, or smaller amount sold or disposed of has a value of \$50,000.00 or more but less than \$100,000.00.

(b) The person violates subsection (5)(a) 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).

(7) If any of the following apply, the person is guilty of a felony punishable by imprisonment for not more than 20 years or a fine of not more than \$35,000.00 or 3 times the value, whichever is greater, or both imprisonment and a fine:

(a) The land, interest in land, money, personal property, use of the instrument, facility, article, or valuable thing, service, larger amount obtained, or smaller amount sold or disposed of has a value of \$100,000.00 or more.

(b) The person violates subsection (6)(a) 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).

(8) The values of land, interest in land, money, personal property, use of the instrument, facility, article, or valuable thing, service, larger amount obtained, or smaller amount sold or disposed of in separate incidents pursuant to a scheme or course of conduct within any 12-month period may be aggregated to determine the total value involved in the violation of this section.

(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 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) 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 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.

(11) As used in this section, "false pretense" includes, but is not limited to, a false or fraudulent representation, writing, communication, statement, or message, communicated by any means to another person, that the maker of the representation, writing, communication, statement, or message knows is false or fraudulent. The false pretense may be a representation regarding a past or existing fact or circumstance or a representation regarding the intention to perform a future event or to have a future event performed.

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

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate

Gay E. Randall

Clerk of the House of Representatives

Approved

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Governor