

# SENATE BILL No. 1009

February 24, 2004, Introduced by Senators CROSEY, PATTERSON and KUIPERS and referred to the Committee on Judiciary.

A bill to amend 1931 PA 328, entitled "The Michigan penal code," by amending section 218 (MCL 750.218), as amended by 1998 PA 312.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1       Sec. 218. (1) A person who, with **the** intent to defraud or  
2 cheat ~~and by color of a false token or writing, by a false or~~  
3 ~~bogus check or other written, printed, or engraved instrument, by~~  
4 ~~counterfeit coin or metal that is intended to simulate a coin, or~~  
5 ~~by any other~~ **makes or uses** a false pretense ~~does~~ **to do** 1 or  
6 more of the following is guilty of a crime punishable as provided  
7 in this section:

8       (a) ~~Causes~~ **Cause** a person to grant, convey, assign, demise,  
9 lease, or mortgage land or an interest in land.

10       (b) ~~Obtains~~ **Obtain** a person's signature on a forged written

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1 instrument.

2 (c) ~~Obtains~~ **Obtain** from a person any money or personal  
3 property or the use of any instrument, facility, article, or  
4 other valuable thing or service.

5 (d) By means of a false weight or measure ~~obtains~~ **obtain** a  
6 larger amount or quantity of property than was bargained for.

7 (e) By means of a false weight or measure ~~sells~~ **sell** or  
8 ~~disposes~~ **dispose** of a smaller amount or quantity of property  
9 than was bargained for.

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

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

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

25 (b) The person violates subsection (2) and has 1 or more  
26 prior convictions for committing or attempting to commit an  
27 offense under this section or a local ordinance substantially

1 corresponding to this section.

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

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

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

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

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

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

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

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

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

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

21           (c) Information contained in a presentence report.

22           (d) The defendant's statement.

23           (8) If the sentence for a conviction under this section is  
24 enhanced by 1 or more prior convictions, those prior convictions  
25 shall not be used to further enhance the sentence for the  
26 conviction pursuant to section 10, 11, or 12 of chapter IX of the  
27 code of criminal procedure, 1927 PA 175, MCL 769.10, 769.11, and

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1 769.12.

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

<<Enacting section 1. This amendatory act takes effect September 1,  
2004.>>