

[No. 132]

(SB 404)

AN ACT to amend 1982 PA 220, entitled "An act to create a Michigan family farm development authority; to define the powers and duties of the authority; to authorize the making and purchase of loans, deferred payment loans, and grants to certain qualified beginning farmers; to provide tax exemptions; to provide for the issuance and purchase of notes and bonds; to provide for the establishment of funds; and to prescribe criminal penalties," by amending section 29 (MCL 285.279).

The People of the State of Michigan enact:

285.279 Prohibited conduct; violation; penalties; determination of total value; prior convictions; "proceeds" defined; prohibition.

Sec. 29. (1) A person shall not, with the intent to defraud or cheat and designedly by false pretenses, including false statement or representation, obtain money, agricultural land, agricultural improvements, depreciable agricultural property, other real or personal property, or the use of an instrument, facility, article, or other valuable thing or service provided under this act, including participation in a program established under this act.

(2) A person who violates this section is guilty of a crime as follows:

(a) If the value of the proceeds is 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 of the proceeds, whichever is greater, or both imprisonment and a fine.

(b) 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 of the proceeds, whichever is greater, or both imprisonment and a fine:

(i) The value of the proceeds is \$200.00 or more but less than \$1,000.00.

(ii) The person violates subdivision (a) and has 1 or more prior convictions for committing or attempting to commit an offense under this section.

(c) 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 of the proceeds, whichever is greater, or both imprisonment and a fine:

(i) The value of the proceeds is \$1,000.00 or more but less than \$20,000.00.

(ii) The person violates subdivision (b)(i) and has 1 or more prior convictions for violating or attempting to violate this section. For purposes of this subparagraph, however, a prior conviction does not include a conviction for violating or attempting to violate subdivision (a) or (b)(ii).

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

(i) The value of the proceeds is \$20,000.00 or more.

(ii) The person violates subdivision (c)(i) and has 2 or more prior convictions for committing or attempting to commit an offense under this section. For purposes of this subparagraph, however, a prior conviction does not include a conviction for violating or attempting to violate subdivision (a) or (b)(ii).

2001 PUBLIC AND LOCAL ACTS

(3) The values of proceeds obtained in separate incidents pursuant to a scheme or course of conduct within any 12-month period may be aggregated to determine the total value of proceeds obtained.

(4) 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.

(5) As used in this section, "proceeds" means money, agricultural land, agricultural improvements, depreciable agricultural property, other real or personal property, or the use of an instrument, facility, article, or other valuable thing or service obtained in violation of subsection (1).

(6) If the sentence for a conviction under this section is enhanced by 1 or more convictions, those prior convictions shall not be used to further enhance the sentence for the conviction pursuant to 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.

Effective date.

Enacting section 1. This amendatory act takes effect January 1, 2002.

This act is ordered to take immediate effect.

Approved October 23, 2001.

Filed with Secretary of State October 23, 2001.
