

# HOUSE BILL No. 6228

June 1, 2010, Introduced by Reps. Wayne Schmidt, Roy Schmidt, Lori, Mayes, Meekhof and Rogers and referred to the Committee on Judiciary.

A bill to amend 1931 PA 328, entitled  
"The Michigan penal code,"  
(MCL 750.1 to 750.568) by adding section 296.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1        SEC. 296. (1) A PERSON SHALL NOT KNOWINGLY DO ANY OF THE  
2 FOLLOWING WITH THE INTENT TO AVOID PAYMENT FOR ANY SERVICE:

3        (A) SECURE PERFORMANCE OF THE SERVICE BY DECEPTION, THREAT, OR  
4 FALSE TOKEN.

5        (B) HAVING CONTROL OVER THE DISPOSITION OF SERVICES OF ANOTHER  
6 TO WHICH HE OR SHE IS NOT ENTITLED, DIVERT THE OTHER'S SERVICES TO  
7 HIS OR HER OWN BENEFIT OR TO THE BENEFIT OF ANOTHER PERSON NOT  
8 ENTITLED.

9        (C) HAVING CONTROL OF PERSONAL PROPERTY UNDER A WRITTEN RENTAL

1 AGREEMENT, HOLD THE PROPERTY BEYOND THE EXPIRATION OF THE RENTAL  
2 PERIOD WITHOUT THE EFFECTIVE CONSENT OF THE OWNER OF THE PROPERTY,  
3 THEREBY DEPRIVING THE OWNER OF THE PROPERTY OF ITS USE IN FURTHER  
4 RENTALS.

5 (D) SECURE THE PERFORMANCE OF THE SERVICE BY AGREEING TO  
6 PROVIDE COMPENSATION AND, AFTER THE SERVICE IS RENDERED, FAIL TO  
7 MAKE PAYMENT AFTER RECEIVING NOTICE DEMANDING PAYMENT.

8 (2) IT IS A REBUTTABLE PRESUMPTION UNDER THIS SECTION THAT THE  
9 PERSON INTENDED TO AVOID PAYMENT IF ANY OF THE FOLLOWING APPLY:

10 (A) THE PERSON ABSCONDED WITHOUT PAYING FOR THE SERVICE OR  
11 EXPRESSLY REFUSED TO PAY FOR THE SERVICE IN CIRCUMSTANCES WHERE  
12 PAYMENT IS ORDINARILY MADE IMMEDIATELY UPON THE RENDERING OF THE  
13 SERVICE.

14 (B) THE PERSON FAILED TO MAKE PAYMENT UNDER A SERVICE  
15 AGREEMENT WITHIN 10 DAYS AFTER RECEIVING A NOTICE DEMANDING  
16 PAYMENT.

17 (C) THE PERSON RETURNED PROPERTY HELD UNDER A RENTAL AGREEMENT  
18 AFTER THE EXPIRATION OF THE RENTAL AGREEMENT AND FAILED TO PAY THE  
19 APPLICABLE RENTAL CHARGE FOR THE PROPERTY WITHIN 10 DAYS AFTER THE  
20 DATE ON WHICH THE PERSON RECEIVED A NOTICE DEMANDING PAYMENT.

21 (D) THE PERSON FAILED TO RETURN THE PROPERTY HELD UNDER A  
22 RENTAL AGREEMENT AS FOLLOWS:

23 (i) WITHIN 5 DAYS AFTER RECEIVING A NOTICE DEMANDING RETURN, IF  
24 THE PROPERTY IS VALUED AT LESS THAN \$1,500.00.

25 (ii) WITHIN 3 DAYS AFTER RECEIVING A NOTICE DEMANDING RETURN,  
26 IF THE PROPERTY IS VALUED AT \$1,500.00 OR MORE.

27 (3) FOR PURPOSES OF SUBSECTIONS (1) (D) AND (2) (B) AND (D),

1 NOTICE SHALL BE PROVIDED IN WRITING, SENT BY REGISTERED OR  
2 CERTIFIED MAIL WITH RETURN RECEIPT REQUESTED OR BY TELEGRAM WITH  
3 REPORT OF DELIVERY REQUESTED, AND ADDRESSED TO THE PERSON AT HIS OR  
4 HER ADDRESS SHOWN ON THE RENTAL AGREEMENT OR SERVICE AGREEMENT.

5 (4) IF WRITTEN NOTICE IS GIVEN IN ACCORDANCE WITH SUBSECTION  
6 (3), IT IS A REBUTTABLE PRESUMPTION THAT THE NOTICE WAS RECEIVED  
7 NOT LATER THAN 5 DAYS AFTER IT WAS SENT.

8 (5) IF ANY OF THE FOLLOWING APPLY, THE PERSON IS GUILTY OF A  
9 FELONY PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 10 YEARS OR A  
10 FINE OF NOT MORE THAN \$15,000.00 OR 3 TIMES THE VALUE OF THE  
11 PROPERTY INVOLVED, WHICHEVER IS GREATER, OR BOTH IMPRISONMENT AND A  
12 FINE:

13 (A) THE PROPERTY HAS A VALUE OF \$20,000.00 OR MORE.

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

19 (6) IF ANY OF THE FOLLOWING APPLY, THE PERSON IS GUILTY OF A  
20 FELONY PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 5 YEARS OR A  
21 FINE OF NOT MORE THAN \$10,000.00 OR 3 TIMES THE VALUE OF THE  
22 PROPERTY, WHICHEVER IS GREATER, OR BOTH IMPRISONMENT AND A FINE:

23 (A) THE PROPERTY INVOLVED HAS A VALUE OF \$1,000.00 OR MORE BUT  
24 LESS THAN \$20,000.00.

25 (B) THE PERSON VIOLATES SUBSECTION (7) (A) AND HAS 1 OR MORE  
26 PRIOR CONVICTIONS FOR COMMITTING OR ATTEMPTING TO COMMIT AN OFFENSE  
27 UNDER THIS SECTION. FOR PURPOSES OF THIS SUBDIVISION, HOWEVER, A

1 PRIOR CONVICTION DOES NOT INCLUDE A CONVICTION FOR A VIOLATION OR  
2 ATTEMPTED VIOLATION OF SUBSECTION (7) (B) OR (8) .

3 (7) IF ANY OF THE FOLLOWING APPLY, THE PERSON IS GUILTY OF A  
4 MISDEMEANOR PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 1 YEAR OR  
5 A FINE OF NOT MORE THAN \$2,000.00 OR 3 TIMES THE VALUE OF THE  
6 PROPERTY INVOLVED, WHICHEVER IS GREATER, OR BOTH IMPRISONMENT AND A  
7 FINE:

8 (A) THE PROPERTY INVOLVED HAS A VALUE OF \$200.00 OR MORE BUT  
9 LESS THAN \$1,000.00.

10 (B) THE PERSON VIOLATES SUBSECTION (8) AND HAS 1 OR MORE PRIOR  
11 CONVICTIONS FOR COMMITTING OR ATTEMPTING TO COMMIT AN OFFENSE UNDER  
12 THIS SECTION OR A LOCAL ORDINANCE SUBSTANTIALLY CORRESPONDING TO  
13 THIS SECTION.

14 (8) IF THE PROPERTY INVOLVED HAS A VALUE OF LESS THAN \$200.00,  
15 THE PERSON IS GUILTY OF A MISDEMEANOR PUNISHABLE BY IMPRISONMENT  
16 FOR NOT MORE THAN 93 DAYS OR A FINE OF NOT MORE THAN \$500.00 OR 3  
17 TIMES THE VALUE OF THE PROPERTY INVOLVED, WHICHEVER IS GREATER, OR  
18 BOTH IMPRISONMENT AND A FINE.

19 (9) THE VALUES OF PROPERTY INVOLVED IN SEPARATE INCIDENTS  
20 PURSUANT TO A SCHEME OR COURSE OF CONDUCT WITHIN ANY 12-MONTH  
21 PERIOD MAY BE AGGREGATED TO DETERMINE THE TOTAL VALUE OF PROPERTY  
22 INVOLVED.

23 (10) IF THE PROSECUTING ATTORNEY INTENDS TO SEEK AN ENHANCED  
24 SENTENCE BASED UPON THE DEFENDANT HAVING 1 OR MORE PRIOR  
25 CONVICTIONS, THE PROSECUTING ATTORNEY SHALL INCLUDE ON THE  
26 COMPLAINT AND INFORMATION A STATEMENT LISTING THE PRIOR CONVICTION  
27 OR CONVICTIONS. THE EXISTENCE OF THE DEFENDANT'S PRIOR CONVICTION

1 OR CONVICTIONS SHALL BE DETERMINED BY THE COURT, WITHOUT A JURY, AT  
2 SENTENCING OR AT A SEPARATE HEARING FOR THAT PURPOSE BEFORE  
3 SENTENCING. THE EXISTENCE OF A PRIOR CONVICTION MAY BE ESTABLISHED  
4 BY ANY EVIDENCE RELEVANT FOR THAT PURPOSE, INCLUDING, BUT NOT  
5 LIMITED TO, 1 OR MORE OF THE FOLLOWING:

6 (A) A COPY OF THE JUDGMENT OF CONVICTION.

7 (B) A TRANSCRIPT OF A PRIOR TRIAL, PLEA TAKING, OR SENTENCING.

8 (C) INFORMATION CONTAINED IN A PRESENTENCE REPORT.

9 (D) THE DEFENDANT'S STATEMENT.

10 (11) IF THE SENTENCE FOR A CONVICTION UNDER THIS SECTION IS  
11 ENHANCED BY 1 OR MORE PRIOR CONVICTIONS, THOSE PRIOR CONVICTIONS  
12 SHALL NOT BE USED TO FURTHER ENHANCE THE SENTENCE FOR THE  
13 CONVICTION UNDER SECTION 10, 11, OR 12 OF CHAPTER IX OF THE CODE OF  
14 CRIMINAL PROCEDURE, 1927 PA 175, MCL 769.10, 769.11, AND 769.12.