

# HOUSE BILL No. 4895

July 18, 2013, Introduced by Reps. Kesto, Farrington, Callton, Yonker, Johnson, McBroom, MacGregor, McCready, Crawford, Haines, Heise, Hooker, Bumstead, Kowall, Cavanagh, Dianda and Kosowski and referred to the Committee on Criminal Justice.

A bill to amend 1931 PA 328, entitled  
"The Michigan penal code,"  
by amending section 535 (MCL 750.535), as amended by 2006 PA 374.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 535. (1) A person shall not buy, receive, possess,  
2       conceal, or aid in the concealment of stolen, embezzled, or  
3       converted money, goods, or property knowing, or having reason to  
4       know or reason to believe, that the money, goods, or property is  
5       stolen, embezzled, or converted.

6       (2) If any of the following apply, a person who violates  
7       subsection (1) is guilty of a felony punishable by imprisonment for  
8       not more than 10 years or a fine of not more than \$15,000.00 or 3

1 times the value of the property purchased, received, possessed, or  
2 concealed, whichever is greater, or both imprisonment and a fine:

3 (a) The property purchased, received, possessed, or concealed  
4 has a value of \$20,000.00 or more.

5 (b) The property purchased, received, possessed, or concealed  
6 has a value of \$1,000.00 or more but less than \$20,000.00, and the  
7 person has 2 or more prior convictions for committing or attempting  
8 to commit an offense under this section. For purposes of this  
9 subdivision, however, a prior conviction does not include a  
10 conviction for a violation or attempted violation of subsection  
11 (4) (b) or (5).

12 (3) If any of the following apply, a person who violates  
13 subsection (1) is guilty of a felony punishable by imprisonment for  
14 not more than 5 years or a fine of not more than \$10,000.00 or 3  
15 times the value of the property purchased, received, possessed, or  
16 concealed, whichever is greater, or both imprisonment and a fine:

17 (a) The property purchased, received, possessed, or concealed  
18 has a value of \$1,000.00 or more but less than \$20,000.00.

19 (b) The property purchased, received, possessed, or concealed  
20 has a value of \$200.00 or more but less than \$1,000.00, and the  
21 person has 1 or more prior convictions for committing or attempting  
22 to commit an offense under this section. For purposes of this  
23 subdivision, however, a prior conviction does not include a  
24 conviction for a violation or attempted violation of subsection  
25 (4) (b) or (5).

26 (4) If any of the following apply, a person who violates  
27 subsection (1) is guilty of a misdemeanor punishable by

1 imprisonment for not more than 1 year or a fine of not more than  
2 \$2,000.00 or 3 times the value of the property purchased, received,  
3 possessed, or concealed, whichever is greater, or both imprisonment  
4 and a fine:

5 (a) The property purchased, received, possessed, or concealed  
6 has a value of \$200.00 or more but less than \$1,000.00.

7 (b) The property purchased, received, possessed, or concealed  
8 has a value of less than \$200.00, and the person has 1 or more  
9 prior convictions for committing or attempting to commit an offense  
10 under this section or a local ordinance substantially corresponding  
11 to this section.

12 (5) If the property purchased, received, possessed, or  
13 concealed has a value of less than \$200.00, a person who violates  
14 subsection (1) is guilty of a misdemeanor punishable by  
15 imprisonment for not more than 93 days or a fine of not more than  
16 \$500.00 or 3 times the value of the property purchased, received,  
17 possessed, or concealed, whichever is greater, or both imprisonment  
18 and a fine.

19 (6) The values of property purchased, received, possessed, or  
20 concealed in separate incidents pursuant to a scheme or course of  
21 conduct within any 12-month period may be aggregated to determine  
22 the total value of property purchased, received, possessed, or  
23 concealed.

24 (7) A person shall not buy, receive, possess, conceal, or aid  
25 in the concealment of a stolen motor vehicle knowing, or having  
26 reason to know or reason to believe, that the motor vehicle is  
27 stolen, embezzled, or converted. ~~A-EXCEPT AS PROVIDED IN SUBSECTION~~

1 (8), A person who violates this subsection is guilty of a felony  
2 punishable by imprisonment for not more than 5 years or a fine of  
3 not more than \$10,000.00 or 3 times the value of the motor vehicle  
4 purchased, received, possessed, or concealed, whichever is greater,  
5 or both imprisonment and a fine. A person who is charged with,  
6 convicted of, or punished for a violation of this subsection shall  
7 not be convicted of or punished for a violation of another  
8 provision of this section arising from the purchase, receipt,  
9 possession, concealment, or aiding in the concealment of the same  
10 motor vehicle. This subsection does not prohibit the person from  
11 being charged, convicted, or punished under any other applicable  
12 law.

13 (8) A PERSON WHO VIOLATES SUBSECTION (7) AND HAS 1 OR MORE  
14 PRIOR CONVICTIONS FOR COMMITTING OR ATTEMPTING TO COMMIT AN OFFENSE  
15 UNDER THIS SECTION, OTHER THAN A VIOLATION OF SUBSECTION (4) (B) OR  
16 (5), IS GUILTY OF A FELONY PUNISHABLE BY IMPRISONMENT FOR NOT MORE  
17 THAN 10 YEARS OR A FINE OF NOT MORE THAN \$15,000.00 OR 3 TIMES THE  
18 VALUE OF THE VEHICLE PURCHASED, RECEIVED, POSSESSED, CONCEALED,  
19 WHICHEVER IS GREATER, OR BOTH IMPRISONMENT AND A FINE.

20 (9) ~~(8)~~—If the prosecuting attorney intends to seek an  
21 enhanced sentence based upon the defendant having 1 or more prior  
22 convictions, the prosecuting attorney shall include on the  
23 complaint and information a statement listing the prior conviction  
24 or convictions. The existence of the defendant's prior conviction  
25 or convictions shall be determined by the court, without a jury, at  
26 sentencing or at a separate hearing for that purpose before  
27 sentencing. The existence of a prior conviction may be established

1 by any evidence relevant for that purpose, including, but not  
2 limited to, 1 or more of the following:

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

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

5 (c) Information contained in a presentence report.

6 (d) The defendant's statement.

7 **(10)** ~~(9)~~—A person who is a dealer in or collector of  
8 merchandise or personal property, or the agent, employee, or  
9 representative of a dealer or collector of merchandise or personal  
10 property who fails to reasonably inquire whether the person selling  
11 or delivering the stolen, embezzled, or converted property to the  
12 dealer or collector has a legal right to do so or who buys or  
13 receives stolen, embezzled, or converted property that has a  
14 registration, serial, or other identifying number altered or  
15 obliterated on an external surface of the property, is presumed to  
16 have bought or received the property knowing the property is  
17 stolen, embezzled, or converted. This presumption is rebuttable.

18 **(11)** ~~(10)~~—If the sentence for a conviction under this section  
19 is enhanced by 1 or more prior convictions, those prior convictions  
20 shall not be used to further enhance the sentence for the  
21 conviction pursuant to section 10, 11, or 12 of chapter IX of the  
22 code of criminal procedure, 1927 PA 175, MCL 769.10, 769.11, and  
23 769.12.

24 **(12)** ~~(11)~~—It is not a defense to a charge under this section  
25 that the property was not stolen, embezzled, or converted property  
26 at the time of the violation if the property was explicitly  
27 represented to the accused person as being stolen, embezzled, or

1 converted property.