

HOUSE BILL No. 5027

October 1, 2013, Introduced by Reps. Kowall, McCready, Tlaib, Heise, Geiss, Schmidt, Daley, Santana, Bumstead and Kesto and referred to the Committee on Regulatory Reform.

A bill to amend 1931 PA 328, entitled
"The Michigan penal code,"
by amending section 356 (MCL 750.356), as amended by 2008 PA 431,
and by adding section 356e.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 356. (1) A person who commits larceny by stealing any of
2 the following property of another person is guilty of a crime as
3 provided in this section:

4 (a) Money, goods, or chattels.

5 (b) A bank note, bank bill, bond, promissory note, due bill,
6 bill of exchange or other bill, draft, order, or certificate.

7 (c) A book of accounts for or concerning money or goods due,
8 to become due, or to be delivered.

1 (d) A deed or writing containing a conveyance of land or other
2 valuable contract in force.

3 (e) A receipt, release, or defeasance.

4 (f) A writ, process, or public record.

5 ~~—— (g) Nonferrous metal.~~

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

11 (a) The property stolen has a value of \$20,000.00 or more.

12 (b) The person violates subsection (3)(a) and has 2 or more
13 prior convictions for committing or attempting to commit an offense
14 under this section. For purposes of this subdivision, however, a
15 prior conviction does not include a conviction for a violation or
16 attempted violation of subsection (4)(b) or (5).

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

22 (a) The property stolen has a value of \$1,000.00 or more but
23 less than \$20,000.00.

24 (b) The person violates subsection (4)(a) and has 1 or more
25 prior convictions for committing or attempting to commit an offense
26 under this section. For purposes of this subdivision, however, a
27 prior conviction does not include a conviction for a violation or

1 attempted violation of subsection (4)(b) or (5).

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

7 (a) The property stolen has a value of \$200.00 or more but
8 less than \$1,000.00.

9 (b) The person violates subsection (5) and has 1 or more prior
10 convictions for committing or attempting to commit an offense under
11 this section or a local ordinance substantially corresponding to
12 this section.

13 (5) If the property stolen has a value of less than \$200.00,
14 the person is guilty of a misdemeanor punishable by imprisonment
15 for not more than 93 days or a fine of not more than \$500.00 or 3
16 times the value of the property stolen, whichever is greater, or
17 both imprisonment and a fine.

18 ~~—— (6) If the property stolen is nonferrous metal, then, as used~~
19 ~~in this section, "the value of the property stolen" means the~~
20 ~~greatest of the following:~~

21 ~~—— (a) The replacement cost of the stolen nonferrous metal.~~

22 ~~—— (b) The cost of repairing the damage caused by the larceny of~~
23 ~~the nonferrous metal.~~

24 ~~—— (c) The sum of subdivisions (a) and (b).~~

25 (6) ~~(7)~~ The values of property stolen in separate incidents
26 pursuant to a scheme or course of conduct within any 12-month
27 period may be aggregated to determine the total value of property

1 stolen.

2 (7) ~~(8)~~—If the prosecuting attorney intends to seek an
 3 enhanced sentence based upon the defendant having 1 or more prior
 4 convictions, the prosecuting attorney shall include on the
 5 complaint and information a statement listing the prior conviction
 6 or convictions. The existence of the defendant's prior conviction
 7 or convictions shall be determined by the court, without a jury, at
 8 sentencing or at a separate hearing for that purpose before
 9 sentencing. The existence of a prior conviction may be established
 10 by any evidence relevant for that purpose, including, but not
 11 limited to, 1 or more of the following:

- 12 (a) A copy of the judgment of conviction.
- 13 (b) A transcript of a prior trial, plea-taking, or sentencing.
- 14 (c) Information contained in a presentence report.
- 15 (d) The defendant's statement.

16 (8) ~~(9)~~—If the sentence for a conviction under this section is
 17 enhanced by 1 or more prior convictions, those prior convictions
 18 shall not be used to further enhance the sentence for the
 19 conviction ~~pursuant to~~ **UNDER** section 10, 11, or 12 of chapter IX of
 20 the code of criminal procedure, 1927 PA 175, MCL 769.10, 769.11,
 21 and 769.12.

22 ~~—(10) As used in this section, "nonferrous metal" means a metal~~
 23 ~~that does not contain significant quantities of ferrous metal but~~
 24 ~~contains copper, brass, platinum-based metals, aluminum, bronze,~~
 25 ~~lead, zinc, nickel, or alloys of those metals.~~

26 **SEC. 356E. (1) A PERSON WHO COMMITS LARCENY BY STEALING SCRAP**
 27 **METAL IS GUILTY OF A CRIME AS PROVIDED IN THIS SECTION.**

1 (2) IF ANY OF THE FOLLOWING APPLY, THE PERSON IS GUILTY OF A
2 FELONY PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 10 YEARS OR A
3 FINE OF NOT MORE THAN \$15,000.00 OR 3 TIMES THE VALUE OF THE SCRAP
4 METAL STOLEN, WHICHEVER IS GREATER, OR BOTH IMPRISONMENT AND A
5 FINE:

6 (A) THE SCRAP METAL STOLEN HAS A VALUE OF \$20,000.00 OR MORE.

7 (B) THE PERSON VIOLATES SUBSECTION (3) (A) AND HAS 2 OR MORE
8 PRIOR CONVICTIONS FOR COMMITTING OR ATTEMPTING TO COMMIT AN OFFENSE
9 UNDER THIS SECTION. FOR PURPOSES OF THIS SUBDIVISION, HOWEVER, A
10 PRIOR CONVICTION DOES NOT INCLUDE A CONVICTION FOR A VIOLATION OR
11 ATTEMPTED VIOLATION OF SUBSECTION (4) (B) OR (5).

12 (3) IF ANY OF THE FOLLOWING APPLY, THE PERSON IS GUILTY OF A
13 FELONY PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 5 YEARS OR A
14 FINE OF NOT MORE THAN \$10,000.00 OR 3 TIMES THE VALUE OF THE SCRAP
15 METAL STOLEN, WHICHEVER IS GREATER, OR BOTH IMPRISONMENT AND A
16 FINE:

17 (A) THE SCRAP METAL STOLEN HAS A VALUE OF \$1,000.00 OR MORE
18 BUT LESS THAN \$20,000.00.

19 (B) THE PERSON VIOLATES SUBSECTION (4) (A) AND HAS 1 OR MORE
20 PRIOR CONVICTIONS FOR COMMITTING OR ATTEMPTING TO COMMIT AN OFFENSE
21 UNDER THIS SECTION. FOR PURPOSES OF THIS SUBDIVISION, HOWEVER, A
22 PRIOR CONVICTION DOES NOT INCLUDE A CONVICTION FOR A VIOLATION OR
23 ATTEMPTED VIOLATION OF SUBSECTION (4) (B) OR (5).

24 (4) IF ANY OF THE FOLLOWING APPLY, THE PERSON IS GUILTY OF A
25 MISDEMEANOR PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 1 YEAR OR
26 A FINE OF NOT MORE THAN \$2,000.00 OR 3 TIMES THE VALUE OF THE SCRAP
27 METAL STOLEN, WHICHEVER IS GREATER, OR BOTH IMPRISONMENT AND A

1 FINE:

2 (A) THE SCRAP METAL STOLEN HAS A VALUE OF \$200.00 OR MORE BUT
3 LESS THAN \$1,000.00.

4 (B) THE PERSON VIOLATES SUBSECTION (5) AND HAS 1 OR MORE PRIOR
5 CONVICTIONS FOR COMMITTING OR ATTEMPTING TO COMMIT AN OFFENSE UNDER
6 THIS SECTION OR A LOCAL ORDINANCE SUBSTANTIALLY CORRESPONDING TO
7 THIS SECTION.

8 (5) IF THE SCRAP METAL STOLEN HAS A VALUE OF LESS THAN
9 \$200.00, THE PERSON IS GUILTY OF A MISDEMEANOR PUNISHABLE BY
10 IMPRISONMENT FOR NOT MORE THAN 93 DAYS OR A FINE OF NOT MORE THAN
11 \$500.00 OR 3 TIMES THE VALUE OF THE SCRAP METAL STOLEN, WHICHEVER
12 IS GREATER, OR BOTH IMPRISONMENT AND A FINE.

13 (6) IF THE SCRAP METAL STOLEN IS NONFERROUS METAL, THEN, AS
14 USED IN THIS SECTION, "THE VALUE OF THE SCRAP METAL STOLEN" MEANS
15 THE GREATEST OF THE FOLLOWING:

16 (A) THE REPLACEMENT COST OF THE STOLEN NONFERROUS METAL.

17 (B) THE COST OF REPAIRING THE DAMAGE CAUSED BY THE LARCENY OF
18 THE NONFERROUS METAL.

19 (C) THE SUM OF SUBDIVISIONS (A) AND (B).

20 (7) THE VALUES OF SCRAP METAL STOLEN IN SEPARATE INCIDENTS
21 PURSUANT TO A SCHEME OR COURSE OF CONDUCT WITHIN ANY 12-MONTH
22 PERIOD MAY BE AGGREGATED TO DETERMINE THE TOTAL VALUE OF SCRAP
23 METAL STOLEN.

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

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

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

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

9 (C) INFORMATION CONTAINED IN A PRESENTENCE REPORT.

10 (D) THE DEFENDANT'S STATEMENT.

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

16 (10) AS USED IN THIS SECTION, "FERROUS METAL", "NONFERROUS
17 METAL", AND "SCRAP METAL" MEAN THOSE TERMS AS DEFINED IN THE
18 FERROUS METAL AND NONFERROUS METAL REGULATION AND SCRAP METAL
19 OFFENDERS REGISTRATION ACT, 2008 PA 429, MCL 445.421 TO 445.443.

20 Enacting section 1. This amendatory act does not take effect
21 unless House Bill No. 4699 of the 97th Legislature is enacted into
22 law.