

SUBSTITUTE FOR
SENATE BILL NO. 1176

A bill to amend 1931 PA 328, entitled
"The Michigan penal code,"
(MCL 750.1 to 750.568) by adding section 395.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 395. (1) A person shall not do either of the
2 following:

3 (a) Damage or destroy the research property of another person
4 with the intent to do either of the following:

5 (i) To frighten, intimidate, or harass any person because of
6 the person's participation or involvement in, or cooperation
7 with, research.

8 (ii) To prevent any person from engaging in any lawful
9 profession, occupation, or activity because of the person's
10 participation or involvement in, or cooperation with, research.

11 (iii) To prevent, delay, hinder, or otherwise harm the

1 research or use of the research.

2 (b) Place any object in any research property to prevent the
3 lawful growing, harvesting, transportation, keeping, selling, or
4 processing of that research property.

5 (2) A person who violates subsection (1) is guilty of a crime
6 as follows:

7 (a) If the value of the research property is less than
8 \$200.00, the person is guilty of a misdemeanor punishable by
9 imprisonment for not more than 93 days or a fine of not more than
10 \$500.00 or 3 times the value of the research property damaged or
11 destroyed, whichever is greater, or both imprisonment and a
12 fine.

13 (b) If any of the following apply, the person is guilty of a
14 misdemeanor punishable by imprisonment for not more than 1 year
15 or a fine of not more than \$2,000.00 or 3 times the value of the
16 research property damaged or destroyed, whichever is greater, or
17 both imprisonment and a fine:

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

20 (ii) The person violates subdivision (a) and has 1 or more
21 prior convictions for committing or attempting to commit a
22 violation of this section.

23 (c) If any of the following apply, the person is guilty of a
24 felony punishable by imprisonment for not more than 5 years or a
25 fine of not more than \$10,000.00 or 3 times the value of the
26 research property damaged or destroyed, whichever is greater, or
27 both imprisonment and a fine:

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

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

8 (d) If any of the following apply, the person is guilty of a
9 felony punishable by imprisonment for not more than 5 years or a
10 fine of not more than \$15,000.00 or 3 times the value of the
11 research property damaged or destroyed, whichever is greater, or
12 both imprisonment and a fine:

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

14 (ii) The person violates subdivision (c) (i) and has 2 or more
15 prior convictions for committing or attempting to commit a
16 violation of this section. For purposes of this subparagraph,
17 however, a prior conviction does not include a conviction for a
18 violation or attempted violation of subdivision (a) or (b) (ii).

19 (e) If the violation results in physical injury to another
20 individual, other than serious impairment of a body function, the
21 person is guilty of a felony punishable by imprisonment for not
22 more than 5 years or a fine of not more than \$20,000.00 or 3
23 times the value of the research property damaged or destroyed,
24 whichever is greater, or both imprisonment and a fine.

25 (f) If the violation causes serious impairment of a body
26 function to another individual, the person is guilty of a felony
27 punishable by imprisonment for not more than 10 years or a fine

1 of not more than \$25,000.00 or 3 times the value of the research
2 property damaged or destroyed, whichever is greater, or both
3 imprisonment and a fine. As used in this subdivision, "serious
4 impairment of a body function" includes, but is not limited to, 1
5 or more of the following:

6 (i) The loss of a limb or use of a limb.

7 (ii) The loss of a hand, foot, finger, or thumb or use of a
8 hand, foot, finger, or thumb.

9 (iii) The loss of an eye or ear or use of an eye or ear.

10 (iv) The loss or substantial impairment of a bodily
11 function.

12 (v) A serious visible disfigurement.

13 (vi) A comatose state that lasts for more than 3 days.

14 (vii) Any measurable brain damage or mental impairment.

15 (viii) A skull fracture or other serious bone fracture.

16 (ix) A subdural hemorrhage or subdural hematoma.

17 (g) If the violation causes the death of another individual,
18 the person is guilty of a felony and shall be imprisoned for not
19 more than 15 years and may be fined not more than \$40,000.00 or 3
20 times the value of the research property damaged or destroyed,
21 whichever is greater.

22 (3) This section does not prohibit the person from being
23 charged with, convicted of, or punished for any other violation
24 of law arising out of the same criminal transaction as the
25 violation of this section, in lieu of being charged with,
26 convicted of, or punished for the violation of this section.

27 (4) The value of research property damaged or destroyed in

1 separate incidents pursuant to a scheme or course of conduct
2 within any 12-month period may be aggregated to determine the
3 total value of research property damaged or destroyed.

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

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

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

17 (c) Information contained in a presentence report.

18 (d) The defendant's statement.

19 (6) If the sentence for a conviction under this section is
20 enhanced by 1 or more prior convictions, those prior convictions
21 shall not be used to further enhance the sentence for the
22 conviction pursuant to section 10, 11, or 12 of chapter IX of the
23 code of criminal procedure, 1927 PA 175, MCL 769.10, 769.11, and
24 769.12.

25 (7) The court shall order a person convicted of violating
26 this section to pay restitution to the victim. The court may
27 also order the person to pay 1 or more of the following:

Senate Bill No. 1176 as amended September 30, 2004

1 (a) All research and development costs for the research
2 property damaged or destroyed that arise out of the violation.

3 (b) The tuition costs and lost wages of a student conducting
4 research regarding the research property damaged or destroyed or
5 who is unable to conduct or continue research because of a loss
6 that arises out of the violation.

7 (8) As used in this section:

8 (a) "Intellectual property" means that term as defined in
9 section 2 of the confidential research information act, 1994 PA
10 55, MCL 390.1552.

<<(b) "Person" means an individual, partnership, corporation,
limited liability company, association, educational institution, or other
legal or business entity.>>

11 <<(c)>> "Research" means any lawful activity involving the use of
12 animals, animal products, or other animal substances, intended
13 for or used for scientific purposes, including, but not limited
14 to, research, testing, and experimentation.

15 <<(d)>> "Research property" means all real, personal, and
16 intellectual property related to research belonging to or
17 conducted by a person.<< >>

18 Enacting section 1. This amendatory act takes effect January
19 1, 2005.