

# SENATE BILL No. 679

November 13, 2013, Introduced by Senators SMITH and ANANICH and referred to the Committee on Economic Development.

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.

**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.

9           (d) A deed or writing containing a conveyance of land or other

1 valuable contract in force.

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

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

4 (g) ~~Nonferrous~~ **ANY** metal.

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

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

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

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

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

23 (b) The person violates subsection (4) (a) and has 1 or more  
24 prior convictions for committing or attempting to commit an offense  
25 under this section. For purposes of this subdivision, however, a  
26 prior conviction does not include a conviction for a violation or  
27 attempted violation of subsection (4) (b) or (5).

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

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

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

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

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

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

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

23 (c) The sum of subdivisions (a) and (b).

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

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

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

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

21 ~~(10) As used in this section, "nonferrous metal" means a metal~~  
22 ~~that does not contain significant quantities of ferrous metal but~~  
23 ~~contains copper, brass, platinum based metals, aluminum, bronze,~~  
24 ~~lead, zinc, nickel, or alloys of those metals.~~ **IT IS A REBUTTABLE**  
25 **PRESUMPTION IN A PROSECUTION FOR A VIOLATION OF THIS SECTION THAT A**  
26 **PERSON WHO REMOVES OR ATTEMPTS TO REMOVE METAL FROM WITHIN A**  
27 **BUILDING OR STRUCTURE WITHOUT THE WRITTEN PERMISSION OF THE OWNER**

1 OF THAT BUILDING OR STRUCTURE DOES NOT HAVE THE PERMISSION OF THE  
2 OWNER TO REMOVE OR ATTEMPT TO REMOVE THAT METAL IF ANY OF THE  
3 FOLLOWING APPLY:

4 (A) THE METAL HAS A SCRAP VALUE OF \$100.00 OR MORE AT THE TIME  
5 OF THE ALLEGED VIOLATION.

6 (B) THE METAL HAS A TOTAL COMBINED WEIGHT OF 100 POUNDS OR  
7 MORE.

8 (C) THE METAL IS OR WAS SECURED TO THAT BUILDING OR STRUCTURE  
9 BY A NAIL, SCREW, BOLT, OR OTHER MEANS OF FASTENING.

10 (D) THE METAL IS OR WAS ENCLOSED WITHIN A WALL, CEILING, OR  
11 FLOOR OF THAT BUILDING OR STRUCTURE.